THE JURIST

Volume X OCTOBER, 1950 No. 4

AN INTRODUCTION TO THE RULES OF LAW

PART II: OBSERVATIONS ON THE RULES OF LAW OF POPE BONIFACE VIII

SEVERAL observations can profitably be made on the Rules of Law of Pope Boniface VIII. It is only by the serious study of these Rules that they can be used as excellent aids in the training of the canonist and in the proper interpretation of law. It is to be expected that these Rules have not everywhere and with everyone obtained the same approval or acceptance. Some criticisms of the Rules of Law are unworthy of serious consideration and will be ignored here. But some observations have more or less validity and must be discussed before the full value of the Rules of Law will be seen. It is hoped that the discussion of these observations will bring the Rules of Law into reasonable focus.

Three observations will be considered in detail. The first is a consideration of the lack of order in the Rules of Law and the attempts made to divide them according to some reasonably acceptable point of division. The second observation will deal with the relationship found in the Rules of Law. The third observation will consist mostly of a consideration of the strictures made on the Rules of Law by the canonist Bartoccetti.[1] As will presently appear, Bartoccetti offers a

[1] *Le Regole canoniche di Diritto* (Roma, 1939), pp. 217-219.

readily acceptable rearrangement of the Rules of Law but his criticism of the selection of these Rules in preference to other possible ones should be investigated before his opinions are adopted.

1) *The lack of order in the Rules of Law*

Perhaps the first thing which strikes a student of the Rules of Law is their complete lack of order. The numbering of the Rules, beginning with number one and continuing to eighty-eight is not apparently an original numeration. The actual number of Rules has not changed but they were not apparently originally identified by number.[2] Nor has the actual location of the Rules of Law been changed in their series.

Bartoccetti suggests that the order of books in the *Corpus Iuris Canonici* or at least the order of the Rules of Law in Roman Law from which Dino Rosoni took many of his Rules might have been followed. But neither the systematic division of the *Corpus Iuris Canonici* nor Roman Law has been followed.[3] It is true that here and there complementary Rules are placed together. For instance, Rules 9 and 10 both consider possible ratification of acts. Similarly, Rules 16 and 17 implement each other in the preservation of rights. On the other hand, Rules 28, 61 and 74 which all consider the denial of the extension of favors are placed far apart from one another. The same is true of Rules 26 and 64 which both consider possible invalid acts.

The lack of order in the Rules of Law is partially ameliorated by Cousinius,[4] De Mauri [5] and Reh.[6]

Cousinius and De Mauri bring some order into the Rules of Law by including them in their topical arrangement of all the Rules of Law. The difficulty, however, which is en-

[2] Cf. Bartoccetti, *o. c.*, p. 32.

[3] *O. c., l. c.*

[4] *Receptarum Iuris Utriusque Regularum Partitiones* (Amstelodami, 1645), pp. 5-54.

[5] *Regulae Juris* (Milano, 1928), pp. 3-239.

[6] *The Rules of Law and Canon Law* (Romae, 1939), pp. 30-32.

countered here is that both Cousinius and De Mauri include Rules which are dispersed throughout Roman Law even though their summary is not found in the title *De Diversis Regulis Iuris Antiquis*.[7]

Of these two collections of the Rules of Law, Cousinius is better consulted for his divisions and De Mauri for his cross-references.

Reh's contribution toward obtaining some order in the Rules of Law consists of suggesting several divisions. These divisions are accurate enough, but they include both Canon and Roman Law Rules. However, the points of division suggested by Reh can easily be used in the division of the Rules of Canon Law alone. Thus all these Rules would either be common or particular.[8] Common Rules would refer to the whole law.[9] Particular Rules would refer to determined matter in law, e.g., penalties.[10] Particular Rules are divided into judicial, beneficial and moral Rules.[11] A judicial Rule would be limited to the acts connected with a trial.[12] A beneficial Rule would find its only real example in Rule 1.[13] Reh, however, considers a beneficial Rule to embrace all kinds of favors. In this sense, other Rules could be called beneficial.[14] A moral Rule could be subdivided into preceptive, prohibitive and permissive Rules.[15]

[7] D. 50, 17.

[8] Reh's footnotes, p. 30, no. 9 and 10 should be studied carefully for the exact meaning of the terms used in his division.

[9] E. g., Reg. 72: Qui facit per alium est perinde ac si faciat per se ipsum.

[10] E. g., Reg. 49: In poenis benignior est interpretatio facienda.

[11] *O. c.*, p. 32, footnote 18.

[12] E. g., Reg. 26: Ea quae fiunt a iudice si ad eius non spectant officium non subsistunt.

[13] Beneficium ecclesiasticum non potest licite sine institutione canonica obtineri.

[14] E. g., Reg. 17: Indultum a iure beneficium non est alicui auferendum.

[15] *O. c.*, p. 32, footnote 23; cf. also Zallinger, *Institutiones Juris Ecclesiastici* (Romae: 1832), in lib. V, tit. 46, *de Regulis iuris*, § 316.

This division of the Rules of Law in Canon Law as developed from the division of all the Rules of Law by Reh is useful and will aid in the study of the Rules of Law. There is lacking, however, in this division the advantage of the minute topical arrangement of Cousinius and De Mauri.

The best effort in modern times to arrange the Rules of Law of Pope Boniface VIII in a reasonably acceptable order of topics is offered by Bartoccetti.[16] This arrangement is set down here and the writer is deeply appreciative of the opportunity to encourage the study of the Rules of Law by endorsing Bartoccetti's topical arrangement of these Rules. As Bartoccetti himself does, at first only the numbers of the Rules will be written. It would be tedious and entirely unnecessary to write the text of the separate Rules. Later, however, it will be necessary to have at hand the text of some of these Rules. When this necessity occurs, the text will be given.

Bartoccetti with commendable modesty suggests the following arrangement of the Rules of Law.

I. Rules which contain principles immediately evident. These would be Rules 35, 53, and 80.

II. Rules which contain principles more or less evident.

1) Impossibility and imputability: Rules 6, 41, 60, 66.
2) Accessory and principal: Rules 39, 42, 81, 84.
3) *Odia* and favors: Rules 15, 28, 30, 45, 49, 52, 64, 74, 78.
4) Where time is a factor: Rules 2, 18, 54.
5) Responsibility: Rules 19, 22, 25, 27, 29, 36, 48, 76, 86.
6) Useful and useless: Rule 37.
7) Advantage and disadvantage: Rule 55.
8) Genus and species: Rule 34.
9) Plural: Rule 40.

Bartoccetti mentions[17] that Rule 40 indicates that the dual number does not exist in Latin as it does in Greek.

[16] *O. c.*, pp. 32-34, 210-216.

[17] *O. c.*, pp. 33; 212.

III. Rules in which the personal (*persona*) element predominates.

1) Privileges: Rules 7, 16, 17, 61.
2) Qualities: Rules 8, 13, 14, 47, 75.
3) Substitution: Rules 9, 10, 46, 67, 68, 72, 77, 79.
4) Silence: Rules 43, 44.
5) Unworthiness: Rule 87.

IV. Rules in which the real (*res*) element predominates.

1) Possession and prescription: Rules 1, 2, 3, 26, 51, 65.
2) Common items: Rules 29, 56.
3) Legitimate acts and contracts: Rules 21, 33, 50, 57, 58, 59, 69, 70, 73, 82, 83, 85.

V. Rules which pertain to trials:

1) Norms: Rules 12, 26, 31, 88.
2) Interpretation of guilt and responsibility: Rules 4, 5, 23, 24, 49.
3) Plaintiff and defendant: Rules 11, 20, 32, 38, 63, 71.[18]

2) *The relationship between some of the Rules of Law*

Here an attempt will be made to see whether some relationship can be detected among the various Rules of Law in order that their utility may be increased. But there is no intention here to group the Rules of Law in the way suggested by Bartoccetti. His suggestion satisfies a general topical arrangement and it is difficult to see where his arrangement could be improved. The writer's present effort will be expended to investigate what similar concepts are found in the various Rules of Law, what complementary arrangements may exist, what particularization may be found in some Rules and finally what contrasts may be discovered.

That some Rules of Law are complementary is conceded by Reiffenstuel.[19] That some Rules of Law are so similar as

[18] Bartoccetti, *o.c.*, pp. 210-216, prints the appropriate text with above divisions.

[19] *Jus Canonicum Universum* (Parisiis, 1870), vol. VII, e.g., Reg. XVII, no. 1 with Reg. XVI, no. 6.

to be almost identical is a criticism of Bartoccetti.[20] Yet little effort has so far been made to set down the detailed relationship of all those Rules which could be grouped in one or the other classification. It is extremely useful to have the knowledge of these relationships whenever they can be discovered. It must not, however, be supposed that all the Rules of Law will fall into one or another relationship. Some of these Rules are independent, either entirely in their source and application, or at most have a common source in natural law and carry no further relationship with any other Rule of Law. Most of the Rules, however, do possess some relationship with another Rule. Several Rules of Law can be found in a double relationship.

In the grouping of these Rules according to the idea mentioned, the text of the Rules must be immediately at hand. This, of course, is not necessary where independent Rules are indicated. Their number will suffice. The serial order of the Rules, however, is not necessary in the discussion of their relationships. Hence, this will be ignored.

The independent Rules of Law without any relationship to other Rules are Rule 1, 7, 8, 13, 15, 24, 27, 31, 38, 40, 51, 52, 54, 63, 66, 70.

The Rules of Law which have a common source in natural law but are not otherwise related are Rules 2, 3, 4, 5, 12, 23, 32, 36, 58, 59, 61, 65, 69, 75, 76, 82, 83.

a) *The similarity of concept.*

1) The idea of the whole containing the part is found in three Rules. These are Rule 35: *Plus semper in se continet quod est minus;* Rule 53: *Cui licet quod est plus, licet utique quod est minus;* and Rule 80: *In toto partem non est dubium contineri.*

2) The notion that a special concession is not to be used as a model for unauthorized concessions is found in three Rules. These are Rule 28: *Quae a iure communi exorbitant, nequa-*

[20] *O. c.*, p. 219.

quam ad consequentiam sunt trahenda; Rule 74: *Quod alicui gratiose conceditur, trahi non debet ab aliis in exemplum;* and Rule 78: *In argumentum trahi nequeunt, quae propter necessitatem aliquando sunt concessa.*

3) The common notion regarding doubtful concessions or obligations is found in three Rules. These are Rule 30: *In obscuris minimum est sequendum;* Rule 45: *Inspicimus in obscuris quod est verisimilius, vel quod plerumque fieri consuevit;* and Rule 81: *In generali concessione non veniunt ea, quae quis non esset verisimiliter in specie concessurus.*

4) Equalization of advantage and duty is found in two Rules. These are Rule 55: *Qui sentit onus, sentire debet commodum, et e contra;* and Rule 77: *Rationi congruit, ut succedat in onere, qui substituitur in honore.*

5) Condemnation of the use of unauthorized power is found in two Rules. These are Rule 19: *Non est sine culpa, qui rei quae ad eum non pertinet, se immiscet;* and Rule 67: *Quod alicui suo non licet nomine, nec alieno licebit.*

6) Fidelity to one's word is expressed in two Rules. These are Rule 21: *Quod semel placuit amplius displicere non potest;* and Rule 33: *Mutare consilium quis non potest in alterius derimentum.*

7) The evil of advantage at another's expense is expressed in two Rules. These are Rule 22: *Non debet aliquis alterius odio praegravari;* and Rule 48: *Locupletari non debet aliquis cum alterius iniuria vel iactura.*

8) Prohibition of honors is expressed in two Rules. These are Rule 84: *Quum quid una via prohibetur alicui, ad id alia non debet admitti;* and Rule 87: *Infamibus portae non pateant dignitatum.*

b) *The complementary Rules.*

1) Two Rules of Law complement each other in the observance of law. These are Rule 6: *Nemo potest ad impossibile obligari;* and Rule 88: *Certum est, quod is committit in legem, qui, legis verba complectens, contra legis nititur voluntatem.*

2) Two Rules of Law complement each other in the preservation of rights granted by special concession or by the operation of law. These are Rule 16: *Decet concessum a principe beneficium esse mansurum;* and Rule 17: *Indultum a iure beneficium non est alicui auferendum.*

3) Possible ratification of acts is expressed in two complementary Rules of Law. These are Rule 9: *Ratum quis habere non potest quod ipsius nomine non est gestum;* and Rule 10: *Ratihabitionem retrotrahi et mandato non est dubium comparari.*

4) Two Rules of Law complement each other on the use of delegated power. These are Rule 68: *Potest quis per alium, quod potest facere per se ipsum;* and Rule 72: *Qui facit per alium, est perinde, ac si faciat per se ipsum.*

5) The quantity of power is expressed in two complementary Rules of Law. These are Rule 46: *Is, qui in ius succedit alterius, eo iure quo ille, uti debebit;* and Rule 79: *Nemo potest plus iuris transferre in alium, quam sibi competere dinoscatur.*

6) The ultimate value of acts as judged by the passing of time is expressed in two complementary Rules. These are Rule 18: *Non firmatur tractu temporis quod de iure ab initio non subsistit;* and Rule 73: *Factum legitime retractari non debet, licet casus postea eveniat, a quo non potuit inchoari.*

c) *The particularization of the concept found in a Rule of Law.*

1) The concept of an invalid act found in Rule 64: *Quae contra ius fiunt debent utique pro infectis haberi* is particularized in Rule 26: *Ea, quae fiunt a iudice, si ad eius non spectant officium, viribus non subsistunt.*

2) The concept of the right to express oneself found in Rule 29: *Quod omnes tangit debet ab omnibus probari* is particularized in Rule 56: *In re communi potior est conditio prohibentis.*

3) The concept of inability to obey the law found in Rule 6: *Nemo potest ad impossibile obligari* is particularized in Rule 41: *Imputari non debet ei, per quem non stat, si non faciat quod per eum fuerat faciendum.*

4) The concept of benignity found in Rule 49: *In poenis benignior est interpretatio facienda* is particularized in Rule 11: *Quum sunt partium iura obscura, reo favendum est potius quam actori.*

5) The concept of ignorance found in Rule 47: *Praesumitur ignorantia, ubi scientia non probatur* is particularized in Rule 14: *Quum quis in ius succedit alterius iustam ignorantiae causam censetur haberi.*

6) The concept of an accessory item found in Rule 42: *Accessorium naturam sequi congruit principalis* is particularized in Rule 39: *Quum quid prohibetur, prohibentur omnia, quae sequuntur ex illo.*

7) The concept of defense found in Rule 20: *Nullus pluribus uti defensionibus prohibetur* is particularized in Rule 71: *Qui ad agendum admittitur, est ad excipiendum multo magis admittendus.*

8) The concept of silence found in Rule 44: *Is, qui tacet, non fatetur, sed nec utique negare videtur* is particularized in Rule 43: *Qui tacet, consentire videtur.*

9) The concept of responsibility for damage found in Rule 86: *Damnum, quod quis sua culpa sentit, sibi debet, non aliis imputare* is particularized in Rule 62: *Nullus ex consilio, dummodo fraudulentum non fuerit, obligatur.*

10) The concept of definite details embodied in a contract is found in Rule 85: *Contractus ex conventione legem accipere dinoscuntur* is particularized in Rule 50: *Actus legitimi conditionem non accipiunt neque diem.*

d) *The contrasts in the Rules of Law.*

1) In contrast to the idea of Rule 25: *Mora sua cuilibet est nociva* is Rule 60: *Non est in mora qui potest exceptione legitima se tueri.*

2) In contrast to the idea of Rule 85: *Contractus ex conventione legem accipere dinoscuntur* is Rule 57: *Contra eum qui legem dicere potuit apertius, est interpretatio facienda.*

Two Rules of Law, mostly by application, but often, too, by adaptation have some relation to all fields of Law. These are Rule 34: *Generi per speciem derogatur* and Rule 37: *Utile non debet per inutile vitiari.*

Rule 34 is cited in the footnotes to the first book of the Code [21] but Rule 37 is not cited there. It is cited but once in all the footnotes to the Code.[22] There are, however, as Bartoccetti suggests, many places where this Rule could be aptly cited.[23] The meaning is that whatever is efficacious should not be destroyed by a useless appendage.[24] Every commentator from the time of Dino Rosoni [25] on has admitted the wide applicability of Rule 37. The latest commentator viewing the lack of citation in the footnotes of the Code says that perhaps the Rule was forgotten precisely because of its wide applicability.[26]

In the discussion of the relationships between the Rules of Law it should be pointed out that Rules 39 and 84 are not related. Rule 39: *Quum quid prohibetur, prohibentur omnia quae sequuntur ex illo* indicates a prohibition of effects which would follow from the same cause. On the other hand, Rule 84: *Quum quid una via prohibetur alicui, ad id alia non debet admitti* prohibits all separate sources of concession one of which is already prohibited. This Rule has no relation of cause and effect as found in Rule 39.

[21] C. 48, § 1.

[22] C. 167, § 2.

[23] E. g., cc. 42, § 1; 169, § 2; 1092; 1513, § 2; 1515; 1818.

[24] Cf. Reiffenstuel, *o. c.*, vol. VII, Reg. XXXVII, no. 3.

[25] Huius regulae innumerabilia inveniuntur exempla.

[26] Bartoccetti, *o. c.*, p. 118.

3) *Remarks on the criticism of the Rules of Law by Bartoccetti*

At the conclusion of his consideration of the Rules of Law of Pope Boniface VIII and before his review of the Rules of Law of Pope Gregory IX, Bartoccetti offers a criticism of the former set of the Rules of Law.[27] The views of Bartoccetti deserve the utmost attention because of the work entailed in the composition of his admirable volume. Praise of its utility was unhesitatingly given in an earlier article in a discussion of bibliographies of the Rules of Law.

Many of the objections to the Rules of Law are embodied in Bartoccetti's criticism. Hence, the consideration of his criticism in detail will at the same time be a consideration of these objections.

Bartoccetti's criticism of the Rules of Law can be arranged under four headings. These will be considered in turn.

a) *The application of some Rules of Law is too narrow.*

Under this heading, Bartoccetti would name Rules 1 and 83.[28] There is little doubt that Rule 1 has limited application and could well be omitted as a Rule of Law. Rule 1 has historical importance in the controversy concerning lay investiture and its concept is found today in Canon Law[29] but its application beyond benefices is very limited. Hence, Rule 1: *Beneficium ecclesiasticum non potest licite sine institutione canonica obtineri,* could well be omitted from the Rules of Law since it fails of the primary purpose of a Rule, viz., to be applicable to at least several legal matters.

Rule 83: *Bona fides non patitur ut semel exactum iterum exigatur,* could also be omitted from the series of the Rules of Law as Bartoccetti suggests. This Rule is not cited even once in the footnotes to the canons of *The Code of Canon Law.* Obviously, the importance of this Rule is in Moral Theology not in Canon Law. Its omission in the series of the

[27] *O. c.,* pp. 217-219, appendice D, processo alle Regole in VI°.

[28] *O. c.,* p. 219.

[29] Cf. c. 1443, § 1; cf. also c. 2400.

Rules of Law would not impair the efficacy or the utility of these Rules.

Although Bartoccetti does not mention Rule 40 as a Rule which could be omitted, this Rule might also be eliminated without loss. This Rule: *Pluralis locutio duorum numero est contenta,* had its importance when the study of Greek flourished. The Rule indicated that the Latin two constituted a plural. It did not provide the Greek dual number. Now, however, with the study of Greek unhappily and undeservedly neglected, Rule 40 has little importance beyond supporting an opinion that two actions can constitute sufficient matter for a custom. While Rule 40 has valid application, its legitimate use is now so restricted that its omission from the series of the Rules of Law would not be serious.

b) *Some Rules of Law are too evident.*

In this group, Bartoccetti suggests the omission of Rules 35, 53 and 80. This suggestion is based on the fact that such evident ideas are not fit subjects of a Rule of Law. For instance, the mathematical notion of a whole and its part is clear to all.

Bartoccetti's criticism would not be challenged had he limited his remarks to the mathematical view of these Rules as he seems to do in his exposition of Rule 35.[30] While there Bartoccetti admits the use of Rule 35 in a qualitative sense distinguishing it from a quantitative or purely mathematical sense, in his criticism of this Rule Bartoccetti seems to place more importance on the quantitative than on the qualitative sense of Rule 35.

It is precisely this point which must be denied. As far as Rules 35, 53 and 80 indicate mathematical quantities of the whole and its part, they should not remain as Rules of Law, as Bartoccetti suggests. But if Rule 35: *Plus semper in se continet quod est minus;* Rule 53: *Cui licet quod est plus, licet utique quod est minus;* and Rule 80: *In toto partem non*

[30] *O. c.*, p. 113.

est dubium contineri are considered in the sense that power necessary to operate is included in a faculty even if this power is not expressly mentioned in the faculty, these Rules assume an importance impossible to exaggerate. Nor do they in this sense contain a concept which is evident to all. Hence, these Rules have a distinct place in the Rules of Law. It is in the sense just outlined that these Rules are applied to canons 66, § 3 and 200, § 1.

An interesting example illustrating the application of Rule 35 is found in the text of canon 621, § 1. These Regulars who are actually mendicants have the right to beg alms without additional permission of the local Ordinary in dioceses where their religious houses are established.[31] Permission of their superior suffices. The permission of the local Ordinary is already contained in his permission to establish a religious house.[32]

Some valid criticism might be made of the repetition of practically the same idea in these separate Rules. Reiffenstuel himself admits that these three Rules have the same idea.[33]

Bartoccetti's objection to Rules 35, 53 and 80 contains a stricture which should not be ignored. This is the idea that evident concepts should not be the matter of Rules of Law. This certainly cannot be altogether admitted for the very utility of the Rules depends largely on the grasp of the idea which while jurisprudentially evident is arrived at by extraction from other law. It is frequently the neglect of the evident idea which develops into error.

Even in actual legislation where evident items are not so easily encountered, sufficient examples are found in *The Code of Canon Law* in which either the natural law or the divine positive law is restated. The law regulating the impediment

[31] Regulares eleemosynas in diocesi . . . ubi eorum religiosa domus est constituta, quaerere valent de sola Superiorum suorum licentia.

[32] Cf. c. 497, § 1; cf. also *A.A.S.*, I (1909), 153, I, 1.

[33] *O. c.*, vol. VII, Reg. XXXV, no. 1.

of impotence is one example[34] from natural law. Another example from natural law is the law stating the invalidity of acts performed under insurmountable exterior force.[35] Some propositions in Public Ecclesiastical Law are also laws in *The Code of Canon Law*.[36] Evident propositions in Sacramental Theology are also at time laws.[37] Statement of the power of the Roman Pontiff and of the Oecumenical Council are also laws of *The Code of Canon Law*.[38] These are all evident propositions but they are set down as laws.

It follows from the example given that because a proposition is evident, it is not thereby to be excluded from the body of law. In a stronger sense, a Rule of Law should not be omitted because it is evident since this characteristic greatly aids in the use of the Rules of Law.

c) *Some Rules of Law are too elastic.*

Bartoccetti maintains that some Rules of Law are too elastic to be useful.[39] He names Rules 43, 44, 47 and 50. Rule 43 is the well-known Rule: *Qui tacet consentire videtur.* Rule 44 is not so well-known, *Is qui tacet non fatetur, sed nec utique negare videtur.*

That Rule 43 is difficult to apply was already admitted by Reiffenstuel.[40] He says that doctors of law have worked hard to expound this Rule[41] because of the many instances where silence is not taken for consent. The true meaning of Rule 43 according to Reiffenstuel is that silence can be accepted for consent in favorable matters and also in prejudi-

[34] Cf. c. 1068, § 1.

[35] Cf. c. 103, § 1; cf. also c. 167, § 1, 1°.

[36] Cf. cc. 1556; 2202, § 1; 2220, § 1.

[37] Cf. cc. 802; 871; 938, § 1; 1012, § 2; 1118.

[38] Cf. cc. 219; 222, § 1; 228, § 1.

[39] *O. c.*, p. 218.

[40] *O. c.*, vol. VII, Reg. XLIII, no. 2.

[41] In ea declaranda mire desudant doctores.

cial matters if contradiction to allegations is easily possible.[42] With this in mind, Bartoccetti's claim of elasticity is untenable. Abuse of this Rule is notorious. But this should not count against its validity.

Criticism of Rule 44 is founded largely on the belief that this Rule is similar to Rule 43. Bartoccetti, however, is not guilty of such misunderstanding. He interprets this Rule in the proper way[43] maintaining it should be used in the estimation of silence in the face of judicial interrogation. Thus this Rule differs from Rule 43 in an important way in not assigning any probative force to such silence.

Bartoccetti's criticism of elasticity in regard to Rule 44 can be answered with the rejoinder that abuse has brought this Rule into disrepute. Its proper use does not permit elasticity of application.

Rule 47: *Praesumitur ignorantia ubi scientia non probatur,* is likewise criticized as elastic. This criticism, too, results from the abuse of the Rule. Bartoccetti says it is one of the poorer Rules because it is ready for arbitrary and erroneous applications.[44] This is true but, as often maintained, the abuse of a Rule so that it becomes elastic in the hands of unlearned or careless students is not a valid argument against the real utility of the Rule. This Rule is cited under canon 16, § 2 where it aptly supports the contention of ignorance of another's private actions.[45]

Bartoccetti places Rule 50: *Actus legitimi conditionem non recipiunt neque diem,* in the same class of equivocal Rules. Rule 50 could be criticized as Bartoccetti implies as superfluous[46] but it is in no sense elastic. Rule 50, if properly applied and not abused, indicates that certain acts cannot be

[42] *O. c., l. c.,* no. 4.

[43] *O. c.,* p. 131.

[44] *O. c.,* p. 138.

[45] Ignorantia vel error . . . circa factum alienum non notorium praesumitur, donec contrarium probetur.

[46] *O. c.,* p. 143.

subject to conditions.[47] This, of course, is obvious but it does not make the Rule elastic. Abuse of this Rule is readily admitted.

d) *Some Rules of Law are too hazardous.*

The fourth point of criticism which Bartoccetti advances in his strictures on the Rules of Law is best worthy of attention. The point of criticism here, if well-founded, is enough to destroy the utility of the separate Rule against which it is levelled.

Seven Rules are selected by Bartoccetti for criticism on the score that they suffer so many exceptions that the Rule is useless. These are Rules 8, 13, 18, 21, 29, 54, 64. These Rules will be studied in turn briefly.

1) Rule 8: *Semel malus semper praesumitur esse malus,* is characterized by Bartoccetti as anti-christian if the Rule is strictly held. Nothing could be really farther from the correct estimation of this Rule. The Code itself in canon 1757, § 2, 1° says in effect that the testimony of perjurers is suspect.[48] This example is chosen because it indicates not a condition like excommunication but a presumption that present acts will not differ from past acts. Experience teaches the reasonableness of this presumption. Where the Rule fails is where the exception to the Rule occurs. If the exceptions to the Rule outnumber the applications of the Rule, the latter should be abandoned as useless. This, it is contended here, is not the case with Rule 8.

Attention should be called to the abuse of Rule 8. To transfer the presumption in this Rule from one category of crimes to another is an abuse of the Rule. It is not an exception to the Rule. Rule 8 does not contemplate anything but the fear of a repetition of the same evil act.

2) Rule 13: *Ignorantia facti non iuris excusat,* sets up a presumption of ignorance in regard to another's private

[47] Cf. Reiffenstuel, *o. c.,* vol. VII, Reg. L, no. 6.

[48] Ut suspecti; [repelluntur] . . . periurii.

actions. It does not, as commentators admit,[49] apply to all kinds of ignorance. In its proper place and sphere, Rule 13 is extremely useful. If it is used to support all forms of ignorance, an abuse of the Rule exists. Perhaps, however, the Rule is better cited in its latter half where ignorance of the Law does not excuse.

It is not proper to extend the meaning of Rule 13 beyond what is recognized there by jurisprudence. No doubt, if all forms of ignorance and their manifestations are counted, non-application of this Rule will outnumber legitimate application. The Rule, however, was never intended to apply to any ignorance but ignorance of another's private actions. If imputable knowledge of these actions is had, there is a valid exception to Rule 13.

3) Rule 18: *Non firmatur tractu temporis quod de iure ab initio non subsistit,* is justly criticized by Bartoccetti. This Rule has not universal validity. It suffers important exceptions primarily in the matter of custom [50] and prescription.[51] The ultimate and legitimate possession of a benefice is also at times an exception to Rule 18.[52] However, the Rule does not suffer as many exceptions as Bartoccetti suggests.[53] Convalidations and sanations are not proper exceptions to Rule 18. The simple convalidation of a marriage invalid by reason of a diriment impediment is not obtained by the mere passage of time. Nor is radical sanation an exception to Rule 18. Although by a fiction of law the effects of this sanation are retroactive [54] the invalid marriage is not convalidated by the mere passage of time.

Rule 18 is applied to marriages contracted invalidly as contrary to law earlier than the Code even though the impedi-

[49] E.g., Reiffenstuel, *o.c.*, Vol. VII, Reg. XIII, no. 11.

[50] Cf. c. 27, § 1.

[51] Cf. cc. 1508-1512.

[52] Cf. c. 1446.

[53] *O.c.*, p. 218.

[54] Cf. c. 1138, § 1.

ment which obstructed the marriage is no longer a matter of law.[55] A dispensation or sanation is still necessary.

Other items could be mentioned where Rule 18 has direct application. Invalid acts against laws governing alienation of property,[56] contracts,[57] and, in general, elections [58] and religious professions are not validated by the mere passage of time. It is necessary that the element of passage of time be stressed for if an invalid act becomes valid in any other way no proper exception to Rule 18 is found.

It must be admitted, then, that Bartoccetti's criticism of Rule 18 is sound since this Rule is not of universal application. But some of his examples are not apropos.

4) Rule 21: *Quod semel placuit amplius displicere non potuit,* has its primary utility in an agreement mutually entered upon. If the Rule be understood in this sense, it is obvious that while exceptions can be found the Rule itself will be of frequent application. If, however, Rule 21 be understood to include all kinds of decisions, it must fail of application frequently when the rights of others are not involved. With Reiffenstuel,[59] Bartoccetti suggests that a testament is an exception to Rule 21.[60] To the writer this is not an exception for the Rule is not intended to apply to testaments where the whole decision is the testator's and no mutual agreement exists. A real exception would be found if an item in a mutual agreement is denounced because of serious unforeseen circumstances. If the reasonable fear of serious damage exists, the agreement with adequate compensation can be broken and Rule 21 is not applied.

5) Rule 29: *Quod omnes tangit debet ab omnibus probari,* has usually been interpreted in the sense that individual ap-

[55] P.I.C., June 2, 3, 1918.

[56] Cf. c. 1530, § 1, 3°.

[57] Cf. c. 1529.

[58] Cf. c. 162, § 5; cf. also c. 150, § 1.

[59] *O. c.,* vol. VII, Reg. XXI, no. 18.

[60] *O. c.,* p. 218.

proval is necessary only when the item at issue affects the individual members of a moral person or community.[61] The Rule has no application to items relating to the welfare of the moral person or community as a whole. *The Code of Canon Law* incorporates Rule 29 in canon 101, § 1, 2° [62] in the traditional sense just mentioned.

Bartoccetti's criticism of this Rule apparently rests upon the fact that jurisprudence must interpret the legitimate application of this Rule.[63] But this is hardly a matter for valid criticism as everything in law, unless it be of divine origin, is subject to the searching review of legal experience which is nothing else than human wisdom applied to legal matters both rules and statutes. The legislator of Canon Law has amply justified the existence of Rule 29 by including it in the text of the Canon Law.

6) Rule 54: *Qui prior est tempore potior est iure,* is subject to valid criticism for, as Bartoccetti observes,[64] this Rule is employed almost as a last resort. Its use, therefore, is curtailed considerably. In Canon Law it suffers, or can suffer, frequent exceptions.[65] It would not be too much to say that Rule 54 could be eliminated from the series of the Rules of Law without great loss. Used properly, however, Rule 54 has its advantages but the exceptions to this Rule are so frequent that it cannot be applied without constant reference to other items.

7) Rule 64: *Quae contra ius fiunt, debent utique pro infectis haberi* was a controlling Rule in Roman Law.[66] Its application, however, in Canon Law was usually tempered by the insistence on an invalidating clause before an act con-

[61] Cf. e.g., Reiffenstuel, *o. c.,* vol. VII, Reg. XXIX, no. 5.

[62] Quod autem omnes, uti singulos, tangit, ab omnibus probari debet.

[63] *O. c.,* p. 219.

[64] *O. c., l. c.*

[65] Cf. c. 48, § 2.

[66] C. I, 14, 5; cf. also Roelker, "The Interpretation of Invalidating Laws," *The Jurist,* III, pp. 365-375.

trary to a prohibitory law was considered invalid. This was taught by Reiffenstuel [67] but denied by Peckius.[68] The common opinion, however, is represented by Reiffenstuel. Today the matter is beyond dispute. Unless a law expressly or equivalently declares an act invalid the act itself while unlawful is valid.[69]

In view of the present definite legislation in Canon Law, Rule 64 is misleading. Nor, even if understood properly, could it actually be used as a Rule for the exceptions to its application are too numerous. The presumption in Canon Law differs from the presumption in Roman Law. In Canon Law, acts contrary to law are presumed valid. Their invalidity must be clearly demonstrated. Doubts are solved in favor of validity not invalidity.

Bartoccetti's criticism, then, of Rule 64 is entirely legitimate and can be accepted.[70]

This consideration of the criticism by Bartoccetti of the Rules of Law should emphasize the extreme care which must be used when the Rules of Law are applied. No attempt should ever be made to apply these Rules until their historical source, their jurisprudential development and their proper scope are sufficiently studied and digested. It cannot be too strongly said that the exceptions to the various Rules of Law must be studied along with their application. Great advantage can be derived from the proper use of the Rules of Law. Great disadvantage will result if the Rules of Law are misused or abused.

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[67] *O. c.*, vol. VII, Reg. LXIV, no. 3.

[68] *Opera omnia, De Regulis Juris*, Reg. 64.

[69] Cf. c. 11.

[70] *O. c.*, p. 219.

EUTHANASIA AND MODERN MORALITY*

(Their Legal Implications)

A BILL proposed to the legislature of the State of New York to legalize euthanasia would amend the Public Health Law and the Penal Laws of that State, the former by adding a new article, the latter by adding a new section.[1]

By a definition broader than seems to be required by the rest of the bill, which deals only with voluntary euthanasia, euthanasia is the termination of human life by painless means for the purpose of ending severe physical suffering.[2] The person desiring to receive euthanasia is called "the patient." "Physician" is defined to mean any person licensed to practice medicine in the State of New York.[3]

The bill would provide that any person of sound mind over twenty-one years of age who is suffering from severe physical

* Paper read March 19, 1950, before The Religious Roundtable, sponsored by The School of Law of The Catholic University of America, by Thomas Owen Martin, Ph.D., S.T.D., J.C.D., LL.M.

[1] Cf. J. V. Sullivan, *Catholic Teaching on the Morality of Euthanasia,* Washington, D. C.: The Catholic University of America Press, 1949. The proposed bill is reprinted at 25-28.

55 *Senior Scholastic,* n. 14 (Jan. 11, 1950) 13, reports that two years ago a committee of nearly 2,000 New York doctors drew up and approved a bill to legalize euthanasia and urged that mercy deaths "be brought out into the open and safeguarded against abuse rather than, as at present, be practiced illegally and without supervision of regulation."

A poll taken in 1947, continues *Senior Scholastic,* among the general public showed 37 per cent were in favor of euthanasia and 54 per cent were opposed.

[2] The definition given in the *Encyclopaedia of Ethics* is: "Euthanasia may be defined as the doctrine or theory that in certain circumstances, when, owing to disease, senility or the like, a person's life has permanently ceased to be either agreeable or useful, the sufferer should be painlessly killed, either by himself or another." This is obviously broad enough to cover involuntary euthanasia, too.

[3] Cf. sec. 300 of the proposed bill.

pain caused by a disease for which no remedy affording lasting relief or recovery is at the time known to medical science could have euthanasia administered. It further provides that the desire to anticipate death by euthanasia under these conditions shall not be deemed to indicate mental impairment.[4]

Any justice of the Supreme Court of the judicial district, in which the patient resides or may be, or any other judge of a county court of any county in which the patient resides or may be, to whom a petition for euthanasia is presented, shall have jurisdiction of and shall grant euthanasia upon the conditions and in conformity with the provisions of the bill.[5]

The petition for euthanasia must be in writing signed by the patient in the presence of two witnesses who must add their signatures and the post-office addresses of their domicile. A form of petition is included in the bill.[6]

According to this form, the patient must state his age and that he is suffering severe physical pain caused, as he is advised by his physician, by a disease for which no remedy affording lasting relief or recovery is at the time known to medical science. The patient is further to state that he is desirous of anticipating death by euthanasia and hereby petitions for permission to receive euthanasia. He is also to give, so far as possible, the names and addresses of his father, mother, spouse, children, uncles and aunts.

This petition must be accompanied by a certificate signed by the patient's attending physician. A form for such certificate is included in the bill. According to this form, the physician is to state that it is his opinion and belief that the patient is suffering severe physical pain caused by a disease for which no remedy affording lasting relief or recovery is at the present time known to medical science. He is further to state the name whereby the disease from which the patient is suffering is known. He is also to state that he is satisfied that the

[4] Cf. sec. 301.

[5] Cf. sec. 302.

[6] Cf. sec. 303.

patient understands the nature and purpose of the petition in support of which the certificate is issued, and that the disease comes within the provisions of the bill.

The judge or justice to whom the petition for euthanasia has been presented is required to appoint a committee of three competent persons, who are not opposed to euthanasia as provided in the bill, of whom at least two must be physicians and members of a county or district medical society, who shall forthwith examine the patient and such other persons as they deem advisable or as the court may direct and, within five days after their appointment, shall report to the court whether or not the patient understands the nature and purpose of the petition and comes within the provisions of sec. 301 of the bill. The court must then grant or deny the petition within three days of its receipt. If the committee reports in the affirmative the court must grant the petition unless there is reason to believe that the report is erroneous or untrue, in which case the court must state in writing the reason for denying the petition. If the petition is denied an appeal may be taken to the appellate division of the Supreme court, and/or to the Court of Appeals.[7]

When the petition has been granted as provided in the bill, euthanasia is to be administered in the presence of the committee, or any two members thereof, with the patient's consent; but no person shall be obliged to administer or receive euthanasia against his will.[8]

The bill further provides that a person to whom euthanasia has been administered under the conditions of the bill shall not be deemed to have died a violent or unnatural death nor shall any physician or person who has administered or assisted in the administration thereof be deemed to have committed any offense criminal or civil, or be liable to any person whatever for the damages or otherwise.[9]

[7] Cf. sec. 304. The patient may die naturally while all this is going on.

[8] Cf. sec. 305.

[9] Cf. sec. 306.

The penal law is amended by adding a new section [10] providing that death resulting from euthanasia administered pursuant to and in accordance with the provisions of the bill shall not constitute a crime or be punishable under any provisions of the Penal Law.

The bill, then, does not purport to provide relief for those of unsound mind or for minors, although they may be suffering severe physical pain. Likewise, it does not provide relief for those who are suffering severe mental pain, as do neurotics.[11] It does not provide relief for hopeless cripples who are not such by reason of a disease, e.g. the "basket-cases" in veterans' hospitals.[12] Persons in all these groups may be a burden to themselves, to their relatives, and to society, but relief is not afforded in their cases under the bill.

Excluded from the committee to be appointed by the judge to examine the patient are persons who are opposed to euthanasia as provided in the bill. One is inclined to ask whether an act would constitutionally afford due process if persons opposed to a labor injunction were required to be

[10] Cf. sec. 1056, as proposed.

[11] Cf. M. Gumpert, M.D., "Euthanasia—Pro and Con, a False Mercy," 170 *The Nation,* n. 4 (Jan. 28, 1950) 80, where he points out that millions of people today live a hopeless and painful, even a socially useless, life without the benefit of an incurable disease. Asking whether they should be permitted to be candidates for euthanasia, he notes that suffering is more readily accepted by a person who has a painful disease than by a neurotic person who induces his own misery and pain by emotional processes. The patient, he says, who is in agony and despair most of the time may still get some joy out of existence and will change from longing for death to fear of death so frequently that one would hesitate to decide what should be done, so unsafe is the ground.

[12] Cf. Richard Horace Hoffman, M.D., *Would A Euthanasia Law Be Beneficial or Harmful,* discussion with Robert L. Dickinson, M.D., President, Euthanasia Society of America, on Dec. 16, 1946, printed in 12 (C.B.S.) *Talks,* n. 1 (Jan. 1947) 26, at 27, where he points out that to the "basket-cases" the miracle of life in spite of their agonies is an inspiring light. He adds that today there are so many ways of easing pain, through medicine and surgery, that the battle is won by the sufferer. Even disseminated cancer, as he says, can be so treated that the victim is never fully aware of his disaster and is kept free from pain.

excluded from a committee set up to examine whether it should be issued.[13]

The bill seems to make of the judge a mere rubber stamp. He is required to appoint the committee when he receives a petition. He is required to grant the petition if the committee reports in the affirmative, unless there is reason to believe the report is erroneous or untrue, in which case he is required to state in writing the reason for denying the petition.

It is not made clear how the judge is to inform himself whether the report is erroneous or untrue. No provision seems to be made for him to call witnesses. The only provision which might be construed to cover this point is that whereby he may direct the committee to examine other persons than the patient. There is, however, no provision for a record to be taken by the committee and submitted to the court. Since the committee is primarily a medical one, looking for soundness of mind, understanding of the nature of the petition, and suffering from the particular disease covered by the bill, i.e. one for which no remedy is known, their report as to their examination of other persons might be subject to the hearsay rule.[14]

In fact, no provision is made for the judge to examine the members of the committee to determine how they arrived at their decision. All the judge can do is accept their statement:

[13] Cf. 82 L.Ed. 1053 for an analysis of cases on discrimination in the selection of juries. For racial discrimination, cf. Norris v. State of Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L.Ed. 1074 (1935); Smith v. Texas, 311 U.S. 128, 61 S.Ct. 164, 85 L.Ed. 84 (1940). The prohibitions of the Fourteenth Amendment extend to all acts of the state, whether through its legislative, its executive, or its judicial authorities, as Gray, J., said in Scott v. McNeal, 154 U.S. 34, 14 S.Ct. 1108, 1112, 38 L.Ed. 896 (1894), a case of improper judicial action, approved in Chicago, B. & Q. R. Co. v. City of Chicago, 166 U.S. 226, 233-235, 17 S.Ct. 581, 41 L.Ed. 979 (1897).

[14] The bill carries no requirement that the medical men be specialists in psychiatry, though they are to determine the soundness of mind of the patient and his understanding of the nature of the petition. The testimony, however, of experts in psychiatry on such points has, of late, been found not always acceptable.

a—as to the patient's understanding of the nature and purpose of the petition; b—as to whether the patient is: 1—of sound mind; 2—over twenty-one; 3—suffering from severe physical pain; 4—in pain caused by a disease for which no remedy affording lasting relief or recovery is at the time known to medical science.

The judge does not have before him the patient or the other persons whom the committee examines on its own motion or at his direction. It would appear difficult, therefore, for him to determine that the report is erroneous or untrue. Ordinarily, reasonable ground for disregarding undisputed evidence of unimpeached, competent and credible witnesses would have to be found in its improbability or inconsistency appearing in the record.[15] It might, in fact, be thought that having selected the committee he would be estopped to refuse to accept their report, were it not for the provision as to denial when he has reason to believe it erroneous or untrue. Should some other person approach the court to ask that the petition be not granted, the problem would arise whether the judge could hear the contentions of such a person.

It might be noted, too, that there appears to be no provision for an appeal from a decision of the committee that euthanasia should not be administered. Appeal from a denial of the petition by the judge, after an affirmative decision by the committee, is allowed; but the judge is not given power to grant the petition if the decision of the committee is in the negative, nor is any other method of appeal proposed in the bill. The actual decision whether euthanasia should or should not be administered in the case thus rests with the committee.

All in all, realistically considered, the bill looks like an attempt to compel the court to tag certain "wishes, wants, desires" as "legal." Modern morality so tends—to rebel against the restraint of reason, whether it be by packing a court or by compelling a court to enforce administrative orders

[15] Cf. Moschogianis v. Concrete Material & Mfg. Co., 179 Minn. 177, 228 N.W. 607 (1930). Under the provisions of the bill, however, there is no record.

without examining the basis thereof. Here the judge is placed in the position of having to enforce the decision of an *ad hoc* committee. When courts have been required to enforce the decisions of an administrative agency, which has permanency and familiarity with the technical problems of its field, which enable it to weigh evidence and render a decision, there has, nevertheless, been a feeling that the courts were being imposed upon in that they were not permitted to exercise their own independent judgment.

Students of Administrative Law are familiar with the difficulties involved even in situations in which the hearing examiner is one trained in hearing and weighing the evidence of the experts who testify in the proceedings. His report is frequently subject to challenge, and due process requires that opportunity for such challenge at some stage of the proceedings be given. In the proposed bill there is to be an examination of the patient and, possibly, others by those experts who themselves report and whose affirmative report cannot be set aside by the court unless the court has reason to believe that the report is erroneous or untrue. In Hunter v. Zenith Dredge Co., a workmen's compensation case, where the court was bound by the findings of the medical board, which did not have to file evidence, so that there was no possibility of review, the act was held unconstitutional.[16]

The fact should likewise not be overlooked that the judges of the lower courts are even now overburdened. It is contended that because of these burdens they cannot devote enough attention to the cases before them to be able to do justice in the concrete case.[17] One might, then, ask how much

[16] Cf. Hunter v. Zenith Dredge Co., 220 Minn. 318, 19 N.W. 2d 795 (1945), Sec. 11 of the Act provided: ". . . The findings and conclusions of the medical board, in so far as the same concern such controverted medical questions, shall be adopted by the [Workmen's Compensation] commission as its decision on such questions." The court said, "Due process requires that the evidence on which an agency, board, or commission bases its findings be ascertainable. This court must have the necessary data on which to determine the correctness thereof."

[17] Cf. H. T. Lummus, *The Trial Judge* (1937) 5-7, 77-86.

attention the judge can afford to give to the petition for euthanasia, to the selection of the committee, and to the report.[18] It would appear, then, on the facts, that the judge is really to be only a rubber-stamp giving "legal protection against criticism, and obligatory confirmation." [19]

Another difficulty in connection with the appointment of the committee required by the bill is the reluctance of the average reputable doctor to serve on it.[20] Not a few members of the profession would hesitate to accept such an expansion of their powers and responsibilities.[21] In some communities, indeed, it might be difficult to find doctors who knew enough medicine, were sufficiently unbiased and were willing to take

[18] Cf. 55 *Time*, n. 11 (Mar. 13, 1950) 50, where the doctor expressed himself as "sure that the enlightened magistrate would leave the final decision to doctors and implicate himself as little as possible."

Willard L. Sperry, D.D., Plummer Professor of Christian Morals and Dean of the Divinity School at Harvard for more than twenty-five years, in an article, "The Case Against Mercy Killing," *American Mercury* (March 1950), 271, at 273, feels that the appeal to the courts places in the judiciary a confidence which is by no means warranted by the facts. The judges are not corrupt, they are simply too overworked to give each case the consideration it would merit. Dr. Sperry assumes that the judge, not being widely acquainted with the personnel of the medical profession, would find two physicians willing to serve on the panel and then, in want of leisure and wider knowledge, draft them thereafter for repeated service.

[19] Cf. Dr. Robert L. Dickinson, then President, Euthanasia Society of America, *loc. cit.* at 26.

[20] Sperry, *loc. cit.*, questions whether the average reputable doctor would be willing to serve and so be known in the community as the man who kills people, rather than the man who keeps them alive. At 275, he points out that legalizing mercy killings would involve a drastic revision of the traditional ethics of the medical profession, which boasts the oldest code of professional ethics in the Hippocratic Oath. Taking that oath the physician says, in its course, "I will give no deadly medicine to any one if asked, nor suggest any such counsel." If the profession slips this mooring, Dr. Sperry wonders to what other anchorage it will hold.

[21] Cf. Gumpert, *loc. cit.*, where he says that legalizing euthanasia would be a disservice to the medical profession. It would expand the power and responsibilities of physicians, which, he feels, are already almost unbearably great. He would reject, as a physician, the power and responsibility of the ultimate decision whether a person should live or die.

the time to examine the data carefully so that their decision would be an independent one and not merely reflect the view of the patient's physician.[22] Overworked as is the average able practitioner in these days, when we have such a shortage of doctors, he might find the exclusion clause in the bill convenient. He might also prefer to avoid appointment lest he come to be thought of rather as a hangman than as a healer.[23] Reluctance to administer euthanasia is provided for in the bill, so the physician should have no difficulty in being excused.

If, however, the able, and consequently busy, practitioners, as well as those who want to avoid the hangman taint avoid service on the committee, whom will the judge be able to appoint? It should be remembered that the decision is supposed to rest on whether there is a remedy affording lasting relief or recovery at the time known to medical science. As a practical matter, whether the remedy is known to medical science means whether it is known to the attending physician and to the members of the committee. If the better, and thus the busier, men are not on the committee, how can a scientifically accurate decision be reached in the case?

[22] Cf. 55 *Time,* n. 11 (Mar. 13, 1950) 50, for one doctor's view as to this point.

[23] Cf. 55 *Time,* n. 11 (Mar. 13, 1950) 50, for a discussion of the effect the actual commission of the "mercy-killing" would have on the doctor who performed it. The writer, a doctor, fears that the profession would lose the healthy bloom associated with the bringing forth and maintaining of life and acquire some of the unsocial, morbid air surrounding the hangman's trade.

For an understanding of the air around the hangman's trade, cf. 55 *Time,* n. 10 (Mar. 6, 1950) 38, for the story of "Mr. Ellis," Canada's closest approach to an official executioner. His real name known only to the sheriff of York County, Ont., he slips quietly into town when summoned, computes from prison records the distance the victim must drop, to meet the legal requirement that three cervical vertebrae be fractured or dislocated to snap the spinal cord and bring quick death, and does not see the prisoner until a few minutes before the hanging. The story continues with the notation that the name "Ellis" is taken from a famous English hangman who after 203 hangings cut his own throat. It also mentions that "Ellis'" fee is usually $100 a subject. No provision is made in the bill for the fees of the committee.

In practice, it has unfortunately happened on occasion that a report has been made by similar committees without sufficiently thorough examination. A case in point is that of the woman committed to a mental institution in Michigan because she had " delusions " that her husband, an official of the State Police, together with other officials was taking bribes. After she was committed the men were convicted of taking bribes and sentenced to Southern Michigan Prison. She, however, was not released from the mental institution until an enterprising reporter of *The Detroit Free Press* spread the story on the front page for several days until the State Attorney General finally made an investigation and pronounced the commitment illegal.[24] The reporter also uncovered five different ways in which people had been illegally committed to mental institutions in the State.[25] Of course, one can, upon discovery of such illegal commitment, finally be released, unless association with the insane has brought about a deterioration of mind such that one must be kept there after all. *Habeas corpus,* however, is not of much use when the corpus is a corpse.

As far as cancer is concerned, which seems to be the disease most thought of in connection with euthanasia, it seems that in the last five years there has been most gratifying progress in many categories of science toward a better control thereof. It is, however, still the second highest cause of death, and its victims number between 180,000 and 200,000 annually. In 1949, an estimated 278,164 persons were being treated for cancer for the first time; 879,550 others with a history of cancer were living in all the stages from cure to imminent death, while 229,765 had survived treatment for five or more years, according to the Sloan-Kettering Institute.[26]

[24] Cf. *The Detroit Free Press,* Jan. 4-Jan. 6, 1948.

[25] Cf. *The Detroit Free Press,* Dec. 30, 1947, p. 11. Cf. also *idem,* Dec. 29, p. 13; Dec. 31, p. 9, 1947; Jan. 1, p. 10; Jan. 2, p. 17, 1948.

[26] Cf. *The World Almanac and Book of Facts for 1950* at 377.

The mounting death rate, which in more than 35 years, has risen nearly 300% for a population increase of about 50%, is attributed chiefly to the fact that cancer is primarily a disease of middle and old age. As the population grows older, there is a corresponding rise in susceptibility and death.[27]

Nevertheless, cancer has been pronounced a curable disease to a large extent, and the death rate, adjusted for the age of the population by the Metropolitan Life Insurance Company, is clearly and sharply on the down grade. This change is ascribed to improved methods of diagnosis, depending upon the cytologist, the physicist and the educator, as well as the practitioner, a developing awareness by doctor and patient alike, and a greatly improved medical and surgical care.[28]

That cancer can be halted, especially by early diagnosis, is demonstrated by approximations of percentage of cures drawn up by the American Cancer Society. The regular examination, by competent physicians, of apparently healthy individuals reveals about 1% with overt but silent cancer, most of which is entirely curable and comparatively easily.[29] Early and accurate diagnosis, then, should remove the necessity for the attending physician to inform the patient that he has a disease for which there is no remedy known to medical science. On this score, then, the bill seems to envisage a situation more theoretical than practical.

Polio is a crippling and painful disease, 20 to 25% of the victims of which show marked residual paralysis. New aids, however, are being discovered to assist those who cannot be placed in an iron lung. The viruses are being isolated and vaccine is being prepared.[30] It is questionable, then, how helpful the bill would be in this case.

[27] Cf. *loc. cit.*

[28] Cf. *loc. cit.*

[29] Cf. *loc. cit.*

[30] Cf. *The World Almanac and Book of Facts for 1950* at 375. Cf. also "No More Polio Panics," in *This Week Magazine*, p. 4, *The Detroit News* (June 11, 1950).

In the cases of the 625,000 Americans who die annually from 21 distinct types of heart diseases, three times more than die of cancer,[31] the bill would seem to afford little or no comfort, for they die too quickly and naturally.

Tuberculosis, once known as consumption or "wasting disease," is seventh and last in the leading causes of death in the United States. It is both curable and preventable.[32] Euthanasia, consequently, is not indicated for this condition.

All in all, one is inclined to agree with those who say that "hopeless" or "incurable" disease is an outmoded medical concept.[33] Since the weapons of medicine for fighting pain and alleviating unbearable suffering have increased beyond any expectation, there is no place, they say, for unbearable pain in modern medicine. "What is needed is wise guidance in the tremendous human experience of death, not the fulfilment of a more or less self-imposed death sentence by euthanasia," as Dr. Gumpert observes.[34]

It is pointed out by those opposed to euthanasia that the patient *in extremis* is suggestible, and that relatives might be anxious to have the will read.[35] Even with a less sinister

[31] Cf. *The World Almanac and Book of Facts for 1950* at 376.

[32] Cf. *The World Almanac and Book of Facts for 1950* at 379.

[33] Cf. Gumpert, *loc. cit.*

[34] Cf. *loc. cit.*

[35] Cf. Sperry, *art. cit.*, at 273-274, where he admits that the Society would repudiate with moral indignation any willingness to consent to a use of its merciful proposals to eliminate one who would be, in reality, a victim of his relatives. He feels, however, that it would be hard to prevent the situation from arising once the principle of mercy killing is recognized, for a good many of this world's wolves wear sheep's clothing, as he well turns the phrase.

Cf. also 55 *Time*, n. 11 (Mar. 13, 1950) at 50, where the doctor expresses a fear that the kinsmen eager to read the will would be given an unfair advantage. Calling on personal experience, he reports that these patients can be easily influenced, debilitated as they are by a long illness. He notes, further, that unselfish patients might feel an obligation to have themselves "eliminated," that funds earmarked for their terminal care might be used for other purposes. The selfish patient, on the other hand, would never ask for death, because he got too much enjoyment out of the sacrifices imposed upon the family.

suspicion in mind, one might fear undue influence from the patient's family, for suffering may seem more unbearable to the sensitive onlooker than to the sufferer himself.[36] This suggestibility of the patient seems to be taken into account by the bill when it provides that euthanasia shall not be administered to anyone against his will.[37]

This point, as to the suggestibility of the patient, might become important in connection with the last will and testament of that patient. The bill attempts to eliminate the caveat of unsoundness of mind based on a request for euthanasia, since some courts consider suicide an indication of mental impairment.[38] Though the will, therefore, might not

[36] Cf. Gumpert, *loc. cit.*

[37] Cf. Sperry, *art. cit.*, at 273, where he expresses the view that this concedes a possible flaw in the basic theory of the bill.

Advocates of euthanasia do not fear abuse. Thus, Dickinson, *loc. cit.*, putting it in terms of unscrupulous heirs to a fortune bribing venal doctors appointed by a court subjected to corrupt influence, says that such distrust of the physician to whom we entrust our lives all the time in illness is curious, especially with the provisions of full consideration and consultation.

Similarly, Dr. Harry Benjamin, "Euthanasia—Pro and Con, A Humane Necessity," 170 *The Nation*, n. 4 (Jan. 28, 1950) 79, feels that if the decision on "merciful release" is left to a government-appointed board of at least three persons—for instance, two medical men and one lawyer, who must be unanimous in its favor—the argument of fraud and abuse is weak. He is sure legal experts can devise adequate safeguards.

But cf., *supra*, note 24, on what has happened in commitments to mental institutions on the recommendation of government-appointed boards, and what was said about the impossibility of review by the judge, under the bill, to determine whether the petition should, in his opinion, as distinguished from that of the board, be granted. It might be noted, too, that the bill does not say the decision of the board must be unanimous. All this reliance upon government-appointed boards recalls the tendency decried by Dean Pound, *Contemporary Juristic Thought* (1941), to rely more and more upon "the omniscient bureaucrat."

[38] Cf. Peabody v. Continental Life Ins. Co., 128 Neb. 23, 257 N.W. 482, where the court said that natural love of life creates a presumption, in the absence of evidence to the contrary, that the insured did not commit "suicide," though the presumption is rebuttable. The court there understood "suicide" to mean the intentional taking of one's own life. The presumption under the bill is to be that one who asks for euthanasia is of sound mind and knows the nature and purpose of his act. In fact, this must be attested by

be subject to attack on the grounds that the testator was of such unsound mind as to ask for euthanasia, since that request is expressly denied to be an indication of unsoundness of mind; nevertheless an attack on grounds of undue influence is not precluded. Undue influence upon the making of the will is to be distinguished from undue influence to ask for euthanasia, but they may be closely enough related, on the facts, to lay the groundwork for a successful attack upon the will when it comes to probate. This would seem especially true if the will were made during the same illness from which the testator sought relief through euthanasia. The case would be stronger yet, if it should appear that any devisee or legatee had, directly or indirectly, suggested "merciful release" prior to the making of the will, which suggestion was later acted upon.

Since the bill attempts to take euthanasia out of the category of suicide, as far as penal consequences are concerned, and expressly provides that the physician or person who has administered or assisted in the administration thereof shall not be deemed to have committed any offense, criminal or civil, a change may have to be made, as to such persons, at least, in the ruling that one who counsels another to commit suicide is guilty of murder where the other by reason of such advice kills himself.[39] Whether the terms of the bill are broad enough to remove the disability of other heirs, devisees or legatees, who by their counsel have murdered the ancestor or testator, to take by intestate succession or by will is, however, doubtful. It would seem to be at least arguable that such other heirs, devisees or legatees, who had exercised such undue influence inducing the patient to request euthanasia were not covered by the terms of the bill as it stands, and so could not

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the attending physician and the committee. According to the Peabody case if one's life is taken by himself and there is no evidence that he did it intentionally, it will be held that he did it unintentionally, or in such a state of mind as not to be responsible therefor.

[39] Cf. Commonwealth v. Bowen, 13 Mass. 356, 358, 7 Am. Dec. 154.

take property coming by descent, devise, or bequest. The point might be important in settling claims to an estate.

It is pointed out that while the act of Dr. Sander conformed in theory to the program proposed by the Euthanasia Society, he differed from the Society in that he took the law into his own hands and went ahead on his own account.[40] His action was more in accord, indeed, with the view of the late Dr. Hugh Cabot, one of founders of the Society, than with the present position of that group.[41] Its present position is rather in accord with the view that it is for society, not for the individual to take life.[42]

There are, however, those who feel that a progressive society should limit rather than extend its power over human beings.[43] If the power of society over the citizen is extended, there is fear that involuntary euthanasia may be the next step.[44] There are, even today, those who feel that mongoloid idiots, the hopelessly insane, and criminals should be eliminated,[45] along with the defective child.[46]

[40] Cf. Sperry, *art. cit.*, at 272.

[41] Cf. Sperry, *art. cit.*, at 274.

[42] Cf. Leslie A. White, Professor of Anthropology, University of Michigan, Letter to the Editor, 55 *Time*, n. 6 (Feb. 6, 1950) 6, where he well observes that no civilized society can afford to allow individual citizens to exercise this right.

[43] Cf. Gumpert, *loc. cit.*, where he points out that, strange as it may seem, many people who denounce capital punishment are in favor of euthanasia.

[44] Cf. Walter V. Carty, Letter to the Editor, 55 *Time*, n. 6 (Feb. 6, 1950) 6, where he points to the logical and inevitable conclusion: the extermination of the malformed, the insane, the criminal, the social and biological misfit; the slaying of the mentally and physically weak, the blind, crippled, mute, diseased, alcoholic, aged; the liquidation of all enemies of the State. Ironically, he suggests that the law might later be extended to take care of the rich mother who has been around too long, the "unjust" father who will not let the children have their own way, and the neurotic wife who is something of a bother. In this connection, recall the wife committed to a mental institution, *supra*, note 24.

[45] Cf. Sperry, *art. cit.*, at 274. He quotes an Associated Press dispatch from London (Aug. 24, 1949) to the effect that Bernard Shaw proposes a sweeping cure for crime; abolish prisons and put their inmates to death. Shaw writes,

Still, those once considered hopelessly insane are responding to modern methods of treatment in many instances,[47] so it is questionable where the line would have to be drawn. The apologists for euthanasia do, indeed, repudiate any intention to legalize mercy killing for any other reason than that stated in the bill,[48] but the idea of extending it does crop out in their statements.[49]

As a matter of fact, where euthanasia has been established by law in modern Western Civilization it has been extended to all who were considered socially unfit. It started with a

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"If we find a hungry tiger at large or a cobra in the garden, we do not punish it. We kill it, because if we do not kill it, it will kill us. Fleas, lice, locusts, white ants, Anopheles mosquitoes, Australian rabbits must be exterminated, not punished. Precisely the same necessity arises in cases of incorrigibly dangerous or mischievous human beings, sane or insane, hopeless idiots, and enemy soldiers."

Sperry, *art. cit.*, at 277 reports that the director of one of the great mental hospitals in this country has stated that many members of his staff question the wisdom and necessity of keeping the patients alive; they are not useful and they constitute a heavy burden on the resources of the State. Common sense and economic prudence, it is argued, suggest that they should be quietly and painlessly put away. Sperry observes that there is far more talk of this sort abroad than we realize.

[46] Cf. Hoffman, *loc. cit.*, where he asks whether we are to kill the defective child and throw the idiot to the wolves as in primitive societies.

Cf. also 55 *Time*, n. 11 (Mar. 13, 1950) 50, where the doctor expresses himself as preferring to help to support even at a great sacrifice, a thousand invalids than be partner in the demise of one Helen Keller.

[47] Cf. Hoffman, *loc. cit.* *The World Almanac and Book of Facts for 1950*, at 381, reports that histamine has been found to be effective in the treatment of the mentally ill, alone or in combination with electric shock. Failure of the adrenal glands to respond to stimulation of ACTH from the pituitary has been found to lead to inadequacy of the stress-response mechanism; this may be a factor in the production of schizophrenia, scientists feel.

[48] Cf. Sperry, *art. cit.*, at 276, conceding this.

[49] Cf. Benjamin, *loc. cit.*, "The contention that a seemingly incurable condition might some day be cured by a new medical discovery hardly holds water. How can the hopeless cancer victim *or the imbecile child* of today benefit by a discovery of tomorrow? The laws regulating euthanasia must of course be flexible, and requirements based on present knowledge may be changed in the future" (emphasis added). Cf. also Shaw's view, *supra*, note 45, and that of the hospital staff reported by Sperry, *loc. cit.*

subtle shift in emphasis in the basic attitude of the physician. It started with the acceptance of the attitude, basic in the euthanasia movement, that there is such a thing as a life not worthy to be lived. This attitude in its early stages concerned itself mainly with the severely and chronically sick. Gradually the sphere of those to be included in this category was enlarged to encompass the socially unproductive, the ideologically unwanted, the racially unwanted, and finally all non-Germans. It is important, however, to realize, as Dr. Alexander observes, that the infinitely small wedged-in lever from which this entire trend of mind received its impetus was the attitude toward the non-rehabilitable sick.[50]

In ancient societies and in many primitive societies today, euthanasia has been and still is practiced, not out of mercy for the sufferer, but in the interest of the efficiency of the community as a whole. Thus, the Spartans, according to Plutarch, exposed and dispensed with weakly infants, " considering that for a child ill-suited from birth for health and vigor to live was disadvantageous alike for itself and the State." Plato, in his plans for the Utopia, favored getting rid of frail children and hopeless invalids. Aristotle discouraged the attempt to raise deformed children. The long history of euthanasia has been mainly a matter of social surgery, prompted by economic and military motives rather than pity for the individual sufferer. The tribe or the State ought not to be burdened with the dead weight of citizens whose " usefulness " had never been realized or was now past, this was the underlying theory.[51]

[50] Cf. Leo Alexander, M.D., " Medical Science Under Dictatorship," in *New England Journal of Medicine* (July 14, 1949). Cf. also Sperry, *art. cit.*, at 277, 278, for a summary of this article and of one by A. C. Ivy, M.D., " Nazi War Crimes of a Medical Nature," in *Journal of the American Medical Association* (Jan. 15, 1949). This attitude is not confined to European members of the profession, as is apparent from Sperry's report of the view of the staff of one of the great mental hospitals of this country, *supra*, note 45.

[51] Cf. Sperry, *art. cit.*, at 276. Cf. also Sullivan, *op. cit.*, 4-12. At 4, he shows how our American Indians left beside the trail those whose progress was so slow as to hinder the tribe on its journey to another hunting ground. The need of food for the group was given priority over the need of the incapaci-

Advocates of euthanasia consider the reference to the Nazi procedure but a superficial objection, the product of loose thinking, for the Nazis never asked the consent of patients or relatives.[52] They did, of course, teach the mentally handicapped children to believe that entrance into the *Hitlerkammer,* where they were to die, was a noble act of service to the Fuehrer.[53] The opponents of euthanasia admit that the Nazi procedure is not that of the proposed bill, but they are worried about how the tiny, harmless, shoot grew into the vine the tentacles of which soon choked off all humaneness.[54] It is, after all, our only contemporary experience with the working of such a law. It is difficult, therefore, to leave it entirely out of our consideration of the proposed bill.

At this time, when the relationship of the citizen to the State is so much under discussion and when the dangers to civil liberties seem to be multiplied, it is disturbing to find that the petition of the patient is so worded as to have him ask the "permission" of the State to end his life. Such an acknowledgment of the supremacy of the State over the individual, to the extent that the latter must get its permission to die, is perhaps in accord with modern morality, but it makes one ponder whether the proponents of the legislation realize what was at stake at Runnymede in 1215 and in the constant struggle to assert the "rights of Englishmen" which culminated in the Petition of Right and the Bill of Rights.

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tated person to continue living. The motive was basically economic, it would seem, and may return to prominence with the increase in the number of oldsters in our society who are not able to find employment and must be supported at the expense of the rest of the public.

[52] Cf. Benjamin, *loc. cit.*

[53] Cf. G. A. Ziemer, *Education for Death: The Making of a Nazi* (1941) 76-79.

[54] Cf. Gumpert, *loc. cit.*, where he expresses his anxiety over the attitude of apparently honest physicians toward the orders of a perverted government and at the potential dangers of euthanasia as an instrument of public health.

Cf. also the definition of euthanasia both in the bill and in the *Encyclopaedia of Ethics,* note 2, *supra.*

In the United States the present and proposed health programs are being put on the basis of the cost to society of illness. The cost is said to be the unnecessary human suffering and the yearly loss of hundreds of millions of productive working days.[55] In fact, modern medicine in all countries seems in danger of becoming primarily a matter of the economic rehabilitation of unproductive citizens, and to this extent it ceases to be a matter of devoted care for the single individual sufferer, in and for himself.[56]

The Federal Government is, for example, at the present time, spending $7,500,000 a year to assist the States in caring for crippled children.[57] In addition, last year Congress authorized additional grants of $1,500,000 to States for crippled children for the year ended June 30, 1949.[58] Were these children " eliminated " a considerable amount of money could be saved. It is said that the cost of nursing, of medical and surgical treatment sufficient to keep the cancer patient comfortable are frequently prohibitive.[59] Were the government to progress to the point of taking over all the expense of providing medical and surgical services, the aggravated burden could be lightened by " eliminating " those who could not be made productive, i.e. for whom no lasting relief or recovery was possible in the current state of medical knowledge. That is what primitive societies and the Nazis did. They " elimi-

[55] Cf. *New Republic* (Jan. 16, 1950) 17, " President Truman has repeatedly urged Congress to enact a comprehensive plan for improving the quality of medical care and making such care more completely available to the people. ' The real cost of our present inadequate medical care,' the President said, ' is not measured merely by doctors' and hospital bills. *The real cost to society is in unnecessary human suffering and the yearly loss of hundreds of millions of productive working days* ' " (emphasis added).

[56] Cf. Sperry, *art. cit.*, at 278, relying on the view of Dr. Alexander, cf. *supra*, note 50, and for that reason revealing his qualms against the legalization of mercy killing.

[57] Cf. *The World Almanac and Book of Facts for 1950* at 726.

[58] Cf. *The World Almanac and Book of Facts for 1950* at 386.

[59] Cf. J. C. Bateman, M.D., Letter to the Editor, 55 *Time*, n. 6 (Feb. 6, 1950) 6.

nated" those who were unproductive, uneconomic to care for, a burden to society, as some people are suggesting today.[60]

On occasion, euthanasia is suggested on the ground that it is uneconomic for a person to use up all of his savings in procuring palliation for a condition which is not curable.[61] It might be noted, however, that other theories have been advanced, and to some extent adopted here, according to which one's estate should be completely used up by inheritance taxes in four generations. It has further been suggested, and to some extent brought about, that no one should have an income of more than $25,000 a year. How, then, one is tempted to ask, is it uneconomic for a person who is ill to use up all his substance in paying bills for a final illness? It does "prime the pump," and inherited wealth is supposed to be bad anyway, especially when the State can better take care of all the needs of the citizenry.

Another point to be considered in the matter of the economics of death is that of the life insurance business. The actuarial tables, on the basis of which the companies calculate their premiums, would be seriously disrupted if, in addition to the normal hazards insured, there had to be considered the hazard of voluntary termination of life. It is provided in the bill that the person to whom euthanasia has been administered under the conditions of the bill shall not be deemed to have died a violent or unnatural death. It is further provided that any physician or person who has administered euthanasia or assisted in the administration thereof shall not be deemed to have committed any offense criminal or civil, or be liable to any person whatever for the damages. Death resulting from euthanasia administered pursuant to and in accordance with the provisions of the bill is not to constitute a crime.

[60] Cf. *supra*, note 45.

[61] Cf. Benjamin, *loc. cit.*

Thus, causing the death of the insured would not, it appears, prevent the beneficiary from recovering the face of the policy.[62] The deceased cannot be considered to have died as a felon, thus relieving the company of its duty to pay.[63] Furthermore, he is, presumably, not to be considered as guilty of suicide while sane, which has been held to relieve the company of liability,[64] at least where the payment was to be made to the estate of the deceased.

Clauses drafted to relieve the company in cases of suicide, sane or insane, may not, under the bill, exempt the company from liability to pay, for the act of requesting euthanasia is not to be considered felonious as suicide is. Clauses, therefore, may have to be drafted to exclude liability in the event the insured dies by "mercy killing," if the company is not to be placed at the mercy of the insured's whims.

It might be asked, however, whether this bill, if enacted into law by a State, so substantially affecting existing contracts of insurance by throwing out the suicide clause, would be constitutional. No State, after all, shall pass any law impairing the obligation of contracts.[65]

Advocates of euthanasia argue that, since humane considerations prompt us to put animals out of their misery, those same considerations should prompt us to do the like for human beings.[66] A difficulty, in this regard, is created by the

[62] Cf. New York Mutual Life Ins. Co. v. Armstrong, 117 U.S. 591, 29 L.Ed. 997 (1886).

[63] Cf. Burt v. Insurance Co., 187 U.S. 362, 23 S.Ct. 139, 47 L.Ed. 216 (1902).

[64] Cf. Ritter v. Insurance Co., 169 U.S. 139, 18 S.Ct. 300, 42 L.Ed. 693 (1898).

[65] Cf. U.S. Const., Art. I, sec. 10, § 1, "No state shall . . . pass any . . . law impairing the obligation of contracts."

[66] Cf. Sperry, *art. cit.*, at 274, where he quotes Very Reverend W. R. Inge, the famous "gloomy Dean" of St. Paul's in London as saying: "It seems anomalous that a man may be punished for cruelty if he does not put a horse or a dog out of its misery, but is liable to be hanged for murder if he helps a cancer patient to an overdose of morphine."
Cf. also Benjamin, *loc. cit.*

Thirteenth Amendment forbidding slavery.[67] It is not possible, here, to have property rights in another human being such as we can have in animals. The State may interfere with our property rights in animals to the extent of requiring that we dispose of them humanely, but neither the doctor nor the relatives have any property rights in the patient. Of course, where the State is thought of as practically "owning" the citizens it can dispose of them as it will, and so, indeed, did the Nazis, and do others under whose theories of government the citizens are but cogs in the machine of the State, bound to serve wherever the Master-State demands that they serve, in labor battalions, in the "land army," in the military forces, etc., and to be thrown away if they are unproductive.

Others feel that if it is not wrong to pray that the sick be released from their suffering it is not wrong to do some act which releases them.[68] One may look upon prayer as a series of words directed to God, or as a series of words, merely. In the first case, if the prayer is heard and deliverance is obtained, God is beyond the reach of prosecution. In the second case, the words are just that and neither help nor harm the patient, so there is no occasion for prosecution. When, however, an act is performed the prosecutor can proceed against the man who performed it and subject him to punishment.

Still others feel that if we tamper with man to keep him alive, we should not be prevented from tampering with him

[67] Cf. U.S. Const. Amend. XIII, "Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

[68] Cf. Sperry, *art. cit.*, at 272, where he reports the case of the clergyman who said that if Dr. Sander was guilty, he too was guilty; for he had often prayed that some suffering parishioner might be "eased into the experience of death."

to make him die.[69] There is, however, a rather important distinction between the two types of tampering.

It is further suggested that since a State selects its healthiest citizens to expose to slaughter and life-long maiming to release others from greater ills, it should not be denied the power to end life that is not living.[70] This argument, which would justify involuntary euthanasia as well as the type proposed in the bill, is reminiscent of that of Holmes, J. in Buck v. Bell.[71] He there suggested that the State could call upon those who sapped its strength, by the cost of their care as incompetents, for the lesser sacrifice of sterilization, and that the principle which sustained compulsory vaccination was broad enough to cover cutting the Fallopian tubes.

The supreme sacrifice is asked of the citizen to protect the life, the continued free existence, of the State. The lesser sacrifice, sterilization, is asked to protect society's pocketbook. Holmes' dictum, however, is hardly precedent for asking the sacrifice of the life of the unproductive citizen to protect that pocketbook. Still, the argument could be significant as the costs of Old Age Assistance continue to rise, or if we come to a point where the State assumes the financial burden of all medical care for its citizens.

Conscious of the force of word-symbols, advocates of euthanasia have succeeded in getting it referred to as "mercy killing." Since, however, the word "mercy" does not sufficiently offset the word "killing" in the popular mind, and since the ugly word "murder" continues to crop up when persons are prosecuted for their actions in this regard, it is now being suggested that the words "suicide" or "assisted

[69] Cf. Sperry, *art. cit.*, at 275, where he observes, in answer to this view, that our continual interference with nature always looks to the saving and bettering of life, not to its arbitrary ending.

Cf. also Matth. 26:31-46, where works which tend to sustain life are to be rewarded, while works which tend to abbreviate it, e.g. denial of food, drink, housing, clothing, are to be punished.

[70] Cf. Dickinson, *art. cit.*, at 27.

[71] Cf. Buck v. Bell, 274 U.S. 200, 47 S.Ct. 584, 71 L.Ed. 1000 (1927).

suicide" be used.[72] It is then argued that suicide has been accepted by many civilizations as a completely honorable act.[73]

Brahman and Buddhist doctrines approve suicide in certain circumstances. So, sutteeism, the self-immolation of a Hindu widow on the funeral pyre of her husband, eliminating need for society to support her, has been considered honorable, though attempts have been made to outlaw it. Hara-kiri has also been considered honorable. Defeated generals, dethroned rulers, and statesmen protesting against political policies have committed hara-kiri and have been thought of as doing an honorable thing. Personal insult, insolvency, dishonor or a slight offered to an ancestor have also been considered adequate reasons for self-destruction.[74] In none of these cases, however, do we find a precedent for the suicide of a person suffering severe physical pain caused, as he is advised by his physician, by a disease for which no remedy affording lasting relief or recovery is at the time known to medical science.

[72] Cf. Sperry, *art. cit.*, at 273, where he notes that the Society's bill would seem to cast the transaction into the realm of suicide rather than of murder, even though the fatal act is to be done by a member of the medical profession or an officer of the State.

Cf. also *New Republic* (Jan. 16, 1950) 6, "If we called these situations 'assisted suicide' rather than 'mercy killing,' the moral content would be considerably changed. . . . The term 'murder' implies anger: it is not the word to use for a courageous act of compassion." Compare, R. von Jhering, "Im Juristischen Begriffshimmel," in *Scherz und Ernst in der Jurisprudenz*, for a critique of such "Conceptualism." The writer in *New Republic* seems to be thinking rather of Voluntary Manslaughter than of Murder with malice aforethought, which may involve very cold-blooded premeditation.

[73] Cf. *New Republic, loc. cit.*

Hoffman, *loc. cit.*, denies that there is any instinct to die. From his own experience he mentions a number of cases of attempted suicide, and points out that when they survived not one, to his best recollection, tried it again.

[74] Cf. B. Bunzel, "Suicide," in 14 *Encyclopedia of the Social Sciences* 455, 456. Cf. also B. Malinowski, *Crime and Custom in Savage Society* (1926) 94-95, 97-98. Leo XIII, Encyclical, *Inscrutabili* (Apr. 21, 1878), reprinted in Husslein, *Social Wellsprings* 2, § 2, criticizes this "modern morality."

Turning to the portions of the globe from which, until recently, we preferred exclusively to recruit our citizens, we find that Islam severely condemns suicide. The Talmud condemned it as sinful and did not permit the customary mourning rites for one who had died by suicide.[75] Students of Sacred Scripture point out that the commandment, "Thou shalt not kill," has no object for the verb, so it is capable of covering suicide as well as murder.[76] Origen rejected the suggestion of the pagan, Celsus, that the Christians commit suicide and relieve the State of their presence.[77]

In view of the references made to the action of Seneca (ca. 4 B. C.—65 A. D.), the Roman philosopher, in taking his own life, as he had advocated doing, as justifying euthanasia, it is interesting to note how the Roman Law treated the matter. Emperor Hadrian (117-138 A. D.), several years after Seneca's death, decreed that the property of a suicide should no longer be confiscated by the State. Emperor Antoninus, in 212 A. D., again issued a decree to the effect that the State would not confiscate the property of a suicide. It was this decree which was retained in the Code of Justinian.[78]

[75] Cf. B. Bunzel, *art. cit., loc. cit.* In 10 *The Universal Jewish Encyclopedia,* at 93, it is said that one might ease one's own sufferings, though others were forbidden to hasten the death.

[76] Cf. P. Heinisch, *Das Buch Exodus* (1934) 156, "Das sechste Gebot V.13. Die drei folgenden Gebote sichern die irdischen Gueter des Menschen, Leben, Ehre und Eigentum. Der kostbarste Besitz ist das Leben, darum steht das Verbot, dem Nebenmenschen das Leben zu nehmen, an der ersten Stelle dieser Reihe. Schon durch die Erzaehlung von Kains Tat Gn 4,10 und die sog. noachischen Gebote Gn 9,6 war der Mord verfehmt. *Da kein Objekt genannt ist, ist indirekt auch der Selbstmord untersagt*" (emphasis added).

[77] Cf. Origen, *Contra Celsum* (248 A.D.) 8: 55-56; *CB* (ed. P. Koetschau, 1899), 2,229; *MPG* 11: 1533 ff. Cf. also *Didachè* 2,2; 5,2 (ca. 90-100 A.D.), contrary to Bunzel's assertion, *art. cit.*, that Christian condemnation of suicide stems from St. Augustine.

[78] Cf. D 48.21.3.5 (Hadrian); D 48.21.3.4 (Antoninus). C 9.50.1 (Antoninus) reads: "*Eorum demum bona fisco vindicantur, qui conscientia delati admissique criminis metuque futurae sententiae manus sibi intulerint.* 1. *Eapropter fratrem vel patrem tuum si nullo delato crimine* dolore aliquo corporis aut taedio vitae aut furore aut insania aut aliquo casu *suspendio vitam finisse*

As Marcianus, the commentator quoted in the Digest, remarks, it is important to know for what reason a person has committed suicide, as when it is asked whether one who attempted suicide and did not succeed should be punished, as if for having tried to pass sentence upon himself. Certainly, continues Marcianus, he must be punished unless he was driven to do it by being tired of life or impatient at his sufferings. He is rightly punished if he committed suicide without reason, for he who did not spare himself would be much less inclined to spare others.[79]

The Roman Law, then, permitted one suffering pain, not necessarily severe, nor even incurable, it would seem, or one tired of life, to take his own life, at least to the extent that his property would not be confiscated to the disherison of his heirs. Once the person was dead nothing could be done to him, and the State relaxed its practice of punishing the heirs by confiscation of the property. There is no indication that the State, totalitarian though it was, required that the person tired of life or suffering first beg its permission to end his life, as the bill proposes. Substantially, the Roman Law seems to have treated the matter about as our law does at the present time. It was, perhaps, somewhat more lenient with the unsuccessful suicide.

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constiterit, bona eorum tam ex testamento quam ab intestato ad successores pertinebunt" (emphasis added). Pain, "weariness of life," insanity, would, therefore excuse from confiscation the property of a suicide.

D 48.21.3.5 (Hadrian) reads: *"Videri autem et patrem, qui sibi manus intulisset, quod diceretur filium suum occidisse,* magis dolore filii amissi *mortem sibi irrogasse et ideo bona eius non esse publicanda divus Hadrianus rescripsit"* (emphasis added). Driven by remorse to commit suicide, he was, therefore, excused, according to Hadrian's decree.

D 48.21.3.4 (Antoninus) reads: *"Si quis autem* taedio vitae vel inpatientia doloris alicuius vel alio modo (furor vel dementia—Solazzi, cf. Levy-Rabel, 3 *Index Interpolationum* 550) *vitam finierit successorem habere divus Antoninus rescripsit"* (emphasis added). This is more general than the decree of Hadrian, and this remained in Justinian's Code.

[79] Cf. D 48.21.3.6.

This attitude did not, however, mean that children involved in taking the life of a parent were completely safe.[80] A man who knew that his brother intended to take the life of their father, mother, or other close relative, and did not warn the parent was exiled, and the doctor was put to the torture.[81]

There are those who proclaim that euthanasia is not contrary to the teachings of Christ, but rather is an observance of his words, " Blessed are the merciful." [82] Not so, however, do Mindszenty and Stepinac understand his teaching. They did not take poison to avoid suffering severe physical pain from which they knew, or at least suspected, there would be no relief. Nor did those who were warned of the sufferings to come by St. Peter,[83] take poison in order to escape them. Christ himself knew that he was to die,[84] and by what death,[85] but he did not make use of any of the poisons known in his day, nor did he even take the wine which would have deadened his agony as he hung on the cross.[86] Judas, the Betrayer, indeed, committed suicide, to the horror of the Christian community; [87] but the idea that euthanasia as a merciful relief from physical suffering is part of Christ's teaching falls before the tortured figure on the cross.

The foregoing analysis of the antagonisms existing between the principle of euthanasia and the laws of a nation solidly founded on a Christian culture has deliberately aimed at

[80] Cf. D 48.9, *"De Lege Pompeia de Parricidiis,"* and D 48.9.9, wherein is set forth the penalty.

[81] Cf. D 48.9.2.

[82] Cf. C. Potter, " The Case for Euthanasia," 30 *Reader's Scope* (1947) 113.

[83] Cf. 1 Pet. 4:12-19.

[84] Cf. Luke 9:22; Mark 8:31-33; Matth. 16:21-23 (first prediction); Luke 9:43b-45; Mark 9:30-35; Matth. 17:22-23 (second prediction); Luke 18:31-34; Mark 10:32-34 (third prediction). Cf. also M.-J. Lagrange, O.P., *L'Évangile de Jésus-Christ* (1930) at 252, 264, 412.

[85] Cf. Matth. 20:17-19; John 3:14, 12:34.

[86] Cf. Matth. 27:34, 48; Mark 15:23.

[87] Cf. Matth. 27:5; Acts 1:18.

avoiding sensationalism in depicting the horrifying consequences that would follow from the adoption of that pagan device. It was thought that a representation of the extent to which revolutionary revamping of the constitution and the laws of this nation would be demanded by such an acceptance would not need more than a calm and logical description to demonstrate how adverse it is to our Christian heritage. Even in the latter pages of this study in which there has been rather specifically established the conflict between Christianity and paganism in relation to this principle, it was deemed adequate for the present purpose to point to the conflict in a somewhat dispassionate manner. From what this study has revealed, however, it is apparent that there is ample ammunition available for the Christian crusader in his defense against paganism of Almighty God's supreme dominion over human life.

COLLIER'S COMES TO LOVE LIFE

Collier's received a great number of letters protesting an article in the April 22 issue written by Dr. Foster Kennedy and entitled "The Right to Kill". The letters resulted from a united campaign organized by the New York State Parish and School Sodalities. An acknowledgment was sent to everyone of the correspondents by the editor. Subsequently the New York newspapers carried a full-page advertisement announcing the forthcoming publication of an article in *Woman's Home Companion* (June issue), written by Dr. Benjamin Miller and entitled "Why I Oppose Mercy Killing".

Cases and Studies

SYRIAN MARRIAGE IN THE UNITED STATES

Were two Syrians who were married in the United States prior to the date of which the new marriage code of the Oriental Church became effective (May 2, 1949) obliged to observe the Catholic form of marriage? Can such a marriage be declared null?

PRAEVERSUM

First of all, let it be noted that canon 85 of the Oriental code requires the observance of the form and of a sacred rite. This canon is binding on all members of all the Oriental rites.

It is not apparent whether the case refers to *pure* Syrians, Melkites, or Maronites. Marbach in his dissertation, *Marriage Legislation for the Catholics of the Oriental Rites in the United States and Canada,*[1] says that the *pure* Syrians were never very numerous in this country and that they do not have a church of their own in the United States. However, they are bound by the form in virtue of canon 85 just mentioned. What their status was prior to the Code is not too clear. Marbach says that the synodal legislation under which they were governed required the prayers of the priest without stating whether this was needed for validity.[2] In the case of the Melkites, replies of the Holy See indicated that a similar situation existed and that their marriages without the observance of the form were not evidently null.[3] Though the Synod of Mt. Lebanon adopted legislation similar to that of the decree *" Tametsi,"* the Holy See held that Maronites were not bound by that legislation in the following cases: when they contracted marriage in or out of their Patriarchate with the faithful of other Oriental rites (the exemption was communicated); when, after giving up their domicile

[1] Marbach, *Marriage Legislation for the Catholics of the Oriental Rites in the United States and Canada,* The Catholic University of America Canon Law Studies, n. 243 (Washington, D. C.: The Catholic University of America Press, 1946), p. 150.

[2] *Op. cit.,* p. 122.

[3] Marbach, *op. cit.,* pp. 162, 163.

in their proper territory, they contracted marriage even with each other, whether or not they had acquired a new domicile or quasi-domicile; and when, after obtaining the necessary dispensation, they contracted marriage with non-Catholics.[4] Briefly, then, it seems that a marriage contracted by any member of any of these rites would have to be upheld if contracted before the new Oriental code and within the boundaries of the United States even in the event that a Catholic form of marriage was not observed. That status of course is changed by the new Oriental code in regard to marriages contracted on or after May 2, 1949.

IMPLICIT ACCEPTANCE OF THE FAITH

About 1917 Martin, originally a Catholic but belonging to a family which en masse had turned from and come to hate the Church, entered upon a ceremony of marriage with Margaret, an Episcopalian. In a small maternity hospital Doris was born of this union in February, 1922. When she was four she moved with her family to a country place. From her mother the girl was given to understand that she was a Catholic and she went, from time to time, with friends to Mass. When she was seventeen she entered a hospital to become a nurse. There, under the influence of the Sisters, she came really to know and love the Faith. She attended daily Mass. In her third year she sought to supply for childhood deficiency by joining an evening class of religious instruction under one of the priests at a neighborhood parish church. Thus she acquired a good knowledge of things Catholic, certainly as much as they who have received their instruction in more tender years. Among other things, it was understood clearly that as a Catholic she was bound by the form of marriage. Due to the fact that she was shifted to night duty, she did not entirely complete the course but she had attended some two months three times a week. She had not yet made her First Communion. She never attended Protestant Churches and *de facto* still attends Mass regularly.

She intended to marry Vincent, a Catholic. There occurred between them a temporary misunderstanding and, in a moment of pique, she forthwith went through a civil ceremony of marriage with James, a Methodist, a man she scarcely knew. Whether the groom was baptized or not—even his present whereabouts, if he is living—are presently unknown. Civil divorce soon followed and James has remarried. Doris entered upon a civil ceremony of marriage with Vincent and they now have a three year old son, a baptized Catholic.

Some years ago Doris and Vincent sought ecclesiastical advice and there seemed a fair prospect of results. However, Doris' record of baptism could not be found; so she was instructed to invite her mother to call in order to

[4] Marbach, *op. cit.*, pp. 155-160.

make an affidavit. The mother did, indeed, come *only to state that Doris had not been baptized!* Nonplused, those handling the case thereupon dropped it.

It is only recently that I have become acquainted with the couple and when they consulted me I suggested that Doris ply her mother with a few questions. The mother repeated to Doris that Doris had not been baptized. I asked Doris about the possibility of an Episcopalian baptism, but she thought this unlikely. However, I set afoot an inquiry in that direction and sure enough it turns out that she was baptized November 27, 1922 (at nine months of age), by the rector of St. John's Episcopal Church. I am convinced the baptism was valid, among other reasons because the late officiant was very Catholic minded, looked upon himself as a Catholic, acknowledged the Pope, was buried with a stole given him by some Catholic Sisters. I have not yet notified Doris of this discovery, which surely will astound her.

Under these circumstances, should Doris be considered a Catholic?

CINEFACTUS

Boudreaux [1] discusses the question of tacit acceptance of the faith but clearly shows that, in the case of children who have reached the age of reason, what authors call " tacit " acceptance is really " implicit " acceptance, since it involves not only lack of opposition to the Church but also some positive Catholic practice. In this case, the only positive practice on the part of the child consisted in going to Mass with Catholic friends and this only from time to time.

The authors seem encouraged to admit " implicit " acceptance of the faith on the part of the children of a convert parent because the Holy Office requires of converts who are below the age of puberty only a profession of faith and not an abjuration of heresy.[2] This is entirely in harmony with the exemption of such persons from penalties.

On the other hand, Boudreaux cites a decision of the Rota [3] in

[1] Boudreaux, *The "ab acatholicis nati" of Canon 1099, § 2,* The Catholic University of America Canon Law Studies, n. 227 (Washington, D. C.: The Catholic University of America Press, 1946), pp. 60-71.

[2] Cf. *Fontes,* n. 1073; Goodwine, *The Reception of Converts,* The Catholic University of America Canon Law Studies, n. 198 (Washington, D. C.: The Catholic University of America Press, 1944), p. 122.

[3] S.R.R., *Varsavien., Nullitatis matrimonii,* 10 aug. 1926, coram R.P.D. Francisco Parrillo, Dec. XXXIX—*S. Romanae Rotae Decisiones seu Sententiae quae prodierunt anno 1926 cura eiusdem S. Tribunalis editae* (Romae: Typis Polyglottis Vaticanis, 1935), XVIII (1926), 313-318.

which there was involved a man, born of a Catholic mother and a schismatic father, who was baptized in a schismatic sect, but who received some Catholic training from his mother and who, though attending a schismatic church during his school years, commenced attending the Catholic church after he left school. The Rota held that he was not bound to observe the form of marriage and that his marriage to a non-Catholic before a non-Catholic minister was valid.

Because of this, some would argue that the marriage of Doris and James cannot be declared null without recourse to the Holy See. The diocesan authorities might hold that the precedent set by the Rota is sufficient to indicate that the woman's marriage must be held to be valid. They might point to the fact that the support given "implicit" acceptance of the faith on the part of children as sufficient to submit them to the form of marriage is based upon the conversion of the parents of the children, at least outside private responses in particular cases. Their position would surely be a safe one.

CHAPLAIN'S PAROCHIAL FUNCTIONS

When a chaplain is appointed to a college is it in his right, or that of the dean of the college, to invite the priest who will give the annual retreat to the students in attendance?

QUERCUS

When a lay religious institute asks a local ordinary to send it a chaplain, what do they request? In simplest terms, it may be answered that they are seeking a priest to offer the Holy Sacrifice in their chapel. The service thus sought determines the precise position held by the chaplain in regard to the institute. He has the obligation of offering daily Mass for those he has been appointed to serve, with the right to see that all the requirements of the Code and of the liturgy are observed with relation to the celebration of Mass. Under canon 1268, § 4, it is also his obligation to be an assiduous guardian of the tabernacle in accordance with the requirements of the law. Finally, he has the duty to officiate at whatever divine services are held in the chapel.

Beyond this, as chaplain, there is no sphere of activity allotted to him. He could be given parochial rights under canon 464, § 2.

But unless these have been given him, any other activity in which he engages with regard to the community can be based only on what might be called " a gentleman's agreement ".

Since the invitation to give a retreat to those who are not religious pertains to the parochial function, strictly speaking, it is the pastor who should issue it. However, since the permission of the local ordinary is needed before an extradiocesan priest is invited, in accord with canon 1341, § 1, if this permission is given the dean without complaint on the part of the pastor, there is no reason why the chaplain should protest. The same should be said, it seems, if the dean invites a diocesan priest who possesses diocesan faculties.

DOUBTFUL RITE IN CASE OF ONE TO BE ORDAINED

According to canon 955, § 2, a bishop may not lawfully ordain without an apostolic indult one who belongs to an Oriental rite. If it is very probable, though not certain, that a seminarian belongs to an Oriental rite because his deceased father probably did, may the bishop lawfully ordain the seminarian without an indult because of the insoluble doubt in the case, or dispense from the requirements of canon 955 by virtue of the powers conceded in canon 15? Or is he obliged to apply for an apostolic indult in this case?

ATTEXTUS

It is assumed that the doubt in this case is truly insoluble, though in most cases one must admit that a diligent investigation can clarify the issue, particularly an inquiry into the place of the father's birth and baptism.

In the United States, the case of a Maronite under these circumstances would differ from that of a Ruthenian, for the latter would be subject to the jurisdiction of a bishop of his own rite, while the Maronite would be subject to the bishop of the Latin rite. Thus in the case of the former, the bishop of the Latin rite could, in ordaining a member of an Oriental rite, violate the jurisdictional rights of another bishop, while in the case of the latter, his offense would consist in depriving the Maronite of ordination with the ceremonies of his own rite.

But if the case is truly involved in insoluble doubt, the bishop of the Oriental rite has no more of a claim on the seminarian than has the bishop of the Latin rite; moreover, there is no more reason requiring that the ceremonies of the Oriental rite should be employed than that the ceremonies of the Latin rite be observed in his

ordination. If the question should lie between two bishops of the Latin rite, there seems no reason to question the applicability of canon 15 in the case of an insoluble doubt of fact. No essential change in its applicability is apparent in a case involving a bishop of an Oriental rite or ceremonies of an Oriental rite.

ADVOCATE'S BRIEF IN SECOND INSTANCE

I happen to be the only advocate of our tribunal. I spend considerable time in composing briefs not only for our own matrimonial causes, but also for causes in which our tribunal functions as court of second instance. When the court of first instance renders a sentence favorable to the plaintiff seeking a declaration of nullity, may my brief for the court of second instance simply repeat the arguments already successfully adduced by the advocate in the court of first instance? Would one brief suffice?

BREVIORA

In regard to both queries, Connolly in his dissertation *Appeals* [1] leaves little room to doubt the necessity of filing such a brief, implying something more than a paraphrase of the brief filed in first instance.

SUBSISTENCE PAY OF RELIGIOUS

After his discharge from the army, a young man continued his studies at a college, under the G.I. Bill of Rights. The college received $400.00 annually for tuition, while the student received $75.00 monthly, presumably for his subsistence.

The latter then decided to enter a religious institute of simple vows. He renounced his right to the $75.00 a month before admission to the novitiate and made a disposition before profession ceding the $75.00 to his family.

After profession, he petitioned the government for the $75.00 a month (for his family). The scholasticate received $300.00 a year for his tuition.

Is this "subsistence money" to be considered as "dominium radicale" or revenue or gift money made to the individual as an individual? Does the money belong in any way to the religious institute?

SUPERADDITA

One ventures the opinion that money paid by the federal government in lieu of subsistence should be regarded as owing to the re-

[1] Connolly, *Appeals*, The Catholic University of America Canon Law Studies, n. 79 (Washington, D. C.: The Catholic University of America, 1932), pp. 180, 181.

ligious institute if the member belonged to the institute during his military service; otherwise, it belongs to the member of the institute but the latter is obliged to turn it over to the society as long as he remains a member. In other words, one sees in this payment an analogy with an annual pension given because of mutilation or broken health. Such a pension is governed by the norm just outlined; so the Sacred Congregation of Religious ruled on March 16, 1922, ad V.[1]

INSTALLMENT PAYING OF DOWRY

A young woman was admitted to a pontifical institute of simple perpetual vows with the understanding that she could pay the requisite dowry out of gifts made to her subsequent to her admission. Was this procedure regular?

INDIGENS

A dowry is required in institutes of simple vows only if the constitutions demand it. If they do, only the Holy See can dispense from the requirement, if the institute enjoys pontifical approval.[1] The quinquennial faculties issued to the hierarchy in the United States include the faculty of granting this dispensation.[2] In the absence of a dispensation, the dowry must be paid before investiture or at least a bond must be given for its payment.[3]

In the present case, a bond could not be regarded as adequate since its satisfaction depends upon gifts that may never be made to the religious. Therefore, the young woman could not be admitted without a dispensation. And if a dispensation was granted, then she is under no obligation to pay the sum of the dowry; indeed, she cannot, as a novice,[4] lawfully or validly make such a payment. As

[1] *AAS*, XIV (1922), 196; Bouscaren, *The Canon Law Digest*, I, 312.

[1] Can. 547, §§ 3, 4. In religionibus votorum simplicium, quod ad religiosarum dotem pertinet, standum constitutionibus.

Dos praescripta condonari ex toto vel ex parte nequit sine indulto Sanctae Sedis, si agatur de religione iuris pontificii; sine venia Ordinarii loci, si de religione iuris dioecesani.

[2] Cf. Bouscaren, *The Canon Law Digest*, II, 36.

[3] Can. 547, § 2. Haec dos ante susceptionem habitus monasterio tradatur aut saltem eius traditio tuta reddatur forma iure civili valida.

[4] Can. 568. In novitiatus decursu, si suis beneficiis vel bonis quovis modo novitius renuntiaverit eademve obligaverit, renuntiatio vel obligatio non solum illicita, sed ipso iure irrita est.

a professed religious, she cannot lawfully do so.[5] Thus she cannot make gifts of her own property after she enters the novitiate; and payments made when one is not under an obligation to make them are clearly to be classed as gifts. On the other hand, gifts that are made to her as a religious belong, by the very fact of her profession, to the religious institute. Since they belong to the institute even before the religious turns them over to it, her doing so cannot be regarded in any sense a transfer of title.[6]

One should not overlook the possibility that the requirement in the constitutions in speaking of a dowry may refer only to a sum regarded as necessary to defray the expenses of maintenance of the young woman during the postulancy and the novitiate. In that case, it is not a dowry in the strict sense and is not subject to the laws affecting dowry. Nevertheless, as a requisite in the constitutions, it cannot be waived without a dispensation. And since the institute is one of pontifical approval, it is the Holy See that is competent to dispense. It seems that the quinquennial faculties permitting bishops in the United States to dispense from want of dowry would include the power to dispense from what is a less serious requisite, the want of maintenance funds. This view seems warranted in view of the fact that, under canon 66, § 1, habitual faculties are subject to a liberal interpretation. Of course, the constitutions themselves may authorize the religious superiors to waive the requirement.

MONTH'S RESIDENCE IN NATIONAL PARISH

A young woman, whose antecedents were not those of the parishioners served by the national parish of which I am pastor, has resided in my parish for a little longer than a month. Does canon 1097, § 1, 2°, enable me lawfully to assist at her marriage? This provision seems to make no distinction between territorial parishes and national parishes in regard to the month's residence.

OBRUSSA

[5] Can. 583. Professis a votis simplicibus in Congregationibus religiosis non licet: 1° Per actum inter vivos dominium bonorum suorum titulo gratioso abdicare; . . .

[6] Can. 580, § 2. Quidquid autem industria sua vel inuitu religionis acquirit [professus a votis simplicibus, sive perpetuis sive temporariis], religioni acquirit.

The very same norm mentioned by the questioner refers to the need of domicile or quasi-domicile as the basis for lawful assistance at marriage. The month's residence admitted as a basis for such assistance is really an extension of the basis provided by domicile or quasi-domicile. Who, then, can say that it is not subject to the same restrictions? If the pastor of a national parish cannot lawfully assist at the marriages of those who, because they are not of the nationality served by his parish, cannot by reason of domicile or quasi-domicile become his parishioners, how can it be maintained that he can lawfully assist at the marriages of the very same persons who cannot belong to his parish even by reason of quasi-domicile, when they have resided not seven months within the territory allotted to the parish but only one month?

UNFORESEEN INCOME FROM PROPERTY OF RELIGIOUS

Before the profession of temporary vows, a novice arranged for the payment of income from certain property she owned. She intended to cover all her property and to devote the income from all of it to the same purposes. However, she forgot to specify a certain portion of it. Now, the income that has been derived from this unspecified portion has been accumulating and the superiors do not know whether to regard it as accumulated capital of the religious herself or as funds belonging to the beneficiary named as entitled to income from the property specified in the written document executed by the religious. How should this income be regarded?

OBREPTA

The fact that the religious executed this document seems adequate assurance that the constitutions of the institute do not prevent its novices from or limit them in designating beneficiaries of the income of their capital.[1] Since canon 569, § 1, does not require for such a designation that a document be executed, the intention of the religious in making such an arrangement seems to control the character which the income from her capital will assume, even though an error should creep into the document attesting to that intention. On the other hand, *prima facie* evidence of the intention

[1] Cf. can. 569, § 1. Ante professionem votorum simplicium sive temporariorum sive perpetuorum novitius debet, ad totum tempus quo simplicibus votis adstringetur, bonorum suorum administrationem cedere cui maluerit et, *nisi constitutiones aliud ferant,* de eorundem usu et usufructu libere disponere (italics inserted).

rests on the document. The presumption raised by its written contents must be met with adequate proof, if a variance of their terms is to be permitted. Even the recollection of the religious herself is not adequate to serve in this regard, for she can easily and subconsciously transpose her present intention to serve as the intention she had at the time of the execution of the document. Letters she may have written to her relatives at the time she executed the document can be admitted as proof, if it is apparent that they are genuine. Written memoranda filed among her effects also seem acceptable. If proof of this type cannot be obtained, the income from the unspecified property must be considered as the income of the religious. It is her property and who except the owner is entitled to receive the income of property, in the absence of clear proof that the owner has earmarked it for other beneficiaries? And this income, to date, the religious cannot lawfully give away.[2]

The religious may, however, control future income of this property by executing another document mentioning the property involved and devoting its income to the respective beneficiary.[3]

FORMALITIES IN TRANSFER WITHIN A RELIGIOUS INSTITUTE

One of our students, professed of temporary vows, wishes to transfer to the class of lay brothers (*fratres conversi*). Must he make a postulate before admission to the novitiate? Are new testimonial letters needed?

TRANSILIS

In reference to the transfer of a religious from the group preparing for the priesthood to the group preparing for the brotherhood, the authors seem to restrict the exceptional requisites to those contained in canon 558. As a consequence, they think that a postulancy is not required or a dispensation from the Holy See (to comply with canon 542, 1°). They also believe that only one three-year period of temporary vows is required, unless the superior ex-

[2] Can. 583. Professus a votis simplicibus in Congregationibus religiosis non licet: 1° Per actum inter vivos dominium bonorum suorum titulo gratioso abdicare; . . .

[3] Can. 569, § 2. Ea cessio ac dispositio, si praetermissa fuerit ob defectum bonorum et haec postea supervenerint, aut si facta fuerit et postea alia bona quovis titulo obvenerint, fiat aut iteretur secundum normas § 1 statutas, non obstante simplici professione emissa.

tends the period. In the light of these conclusions, it is but logical to assume that new testimonial letters are not required. Underlying the conclusions is the fundamental view that the transfer from one class to another does not effect a separation from the institute.

Should the period of temporary vows expire just before the transfer or during the novitiate made in preparation for admission to another class, authors are not agreed as to whether the vows should be renewed in the respective case, for the whole or for the remaining portion of the novitiate.[1]

VICAR GENERAL'S DISMISSAL OF RELIGIOUS

Our vicar general hesitates to act on the dismissal of a Sister of Mercy (not of the Union), though the constitutions of these Sisters seem to authorize the local Ordinary to dismiss its members who are professed of only temporary vows. Is he authorized to act under these constitutions?

PARCUS

O'Neill points out in his dissertation, *The Dismissal of Religious in Temporary Vows,*[1] the analogy that exists between the independent houses of the Sisters of Mercy and the monasteries of solemn vow institutes and approves in general the very provision which the constitutions of the Sisters of Mercy (not of the Union) adopted. Of course, in dismissing the religious all the norms of canon 647 must be scrupulously observed. Dismissal does not of itself include a dispensation from the vows and, in the case of perpetual vows, this effect does not follow. However, in virtue of canon 648, the law itself releases the dismissed religious from the obligations of *temporary* vows. A religious professed of perpetual vows in a pontifical institute can be dismissed only by the Holy See (canon 652, § 3).

In a case in which not *dismissal* but a *dispensation* from the vows is sought, in virtue of canon 638 only the Holy See is competent

[1] Cf. Brockhaus, *Religious Who Are Known as Conversi,* The Catholic University of America Canon Law Studies, n. 225 (Washington, D. C.: The Catholic University of America Press, 1946), pp. 72-81. Cf. also *Periodica,* XXV (1936), 103* (Ellis) and XXVI (1937), 33-37 (Beijersbergen); and *Commentarium pro Religiosis,* III (1922), 11, and XVII (1936), 79 (both the latter by Goyeneche).

[1] O'Neill, *The Dismissal of Religious in Temporary Vows,* The Catholic University of America Canon Law Studies, n. 166 (Washington, D. C.: The Catholic University of America Press, 1942), pp. 84, 85.

when the community involved is one that has pontifical approval, even when the vows are temporary.

It is to be noted that these processes are not interchangeable. It is true that a dispensation can be sought by one who is worthy of dismissal. But the dispensation must be sought freely and without coercion. On the other hand, dismissal can be imposed contrary to the will of the religious. But there must be adequate reasons for dismissal and it can be effected only after repeated warning with the imposition of penance.

Since the vicar general's authority in this respect has not been explicitly reserved, he enjoys the local ordinary's power in regard to it.

STATUS OF SISTERS OF MERCY

I have always thought that since the mother houses of the Sisters of Mercy (not of the Union) in the various dioceses are independent of one another, the respective mother houses enjoyed only the approval of the local Ordinary. I have now been told that the institute (not of the Union) is one of pontifical approval. Is this true?

UNIGENA

The Sisters of Mercy (not of the Union), though an institute of simple vows, possesses in a measure the monastic type of organization. This is not so complete as to permit a transfer from one group to another without the making of a novitiate and a new profession.[1] In this sense, the individual groups (or monasteries) are even more independent than the monasteries of religious Orders. Nevertheless, they are united by the possession of identical constitutions and these constitutions have been approved by the Holy See.

In spite of the consequences that are known to be attached to such approval, some doubt seems to have existed in the matter and the Sacred Congregation of Religious was asked whether the Congregation of the Sisters of Mercy, approved, according to their constitutions, by Pope Gregory XVI on June 6, 1841, is to be regarded as a religious institute of pontifical approval or only of diocesan approval. The reply, approved by Pius XI, was given on November 24, 1925, and it declared that the Congregation enjoys pontifical approval.[2]

[1] Can. 633, § 3. Transiens ad aliud monasterium *eiusdem Ordinis* nec novitiatum peragit nec novam emittit professionem (italics inserted).

[2] Cf. Bouscaren, *The Canon Law Digest*, I, 269, 270; *AAS*, XVIII (1926), 14.

Decrees and Decisions

CANONICAL

COMMUNIST YOUTH PENALTIES

In a monitum of July 29, 1950, the Holy Office imposed a specially reserved excommunication on those who pervert Christian youths in communist-led youth organizations. Furthermore, it bars from the reception of the sacraments not only the boys and girls who are members of such organizations but also the parents or guardians who permit them to enroll in them. The effect of this document is of universal extent but it is applicable particularly in France, Italy and Western Germany, where intense efforts to win youth to communism have been made through clubs, associations, and summer camps, agencies that are utilized to encourage youth to ridicule priests and religion and to sneer at Christian doctrine and morality.

* * * * *

PENALTY FOR UNDERMINING ECCLESIASTICAL AUTHORITY

The Sacred Congregation of the Council has decreed as subject to a specially reserved excommunication those who even indirectly participate in a plot against legitimate ecclesiastical authority or in the usurpation of an office, a benefice, or an ecclesiastical dignity, inclusive of those who allow themselves to be installed in any of the latter posts or who retain them.

* * * * *

NEW PATRONS

St. Alphonsus Liguori was made the patron of confessors and moralists on the second centenary of the first publication of his treatise on moral theology. St. John Baptist de la Salle was made the patron of teachers on the third centenary of his birth.

* * * * *

CANONIZATION

St. Mariana de Jesus Paredes was canonized on July 9th.

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PAPAL DEFENSE OF INALIENABLE RIGHTS

In a discourse to delegates of the International Congress on Administrative Science at Florence, Pius XII insisted that the State may not sacrifice to its own ends the right of the individual to honor and reputation, the right of religious freedom, or the right of parents to educate their children.

* * * * *

APPROVAL OF SECULAR INSTITUTE

On June 16, 1950, the Sacred Congregation of Religious definitively approved the "Sacerdotal Society of the Holy Cross and the Work of God", a secular institute with more than a hundred houses throughout the world, founded in Madrid on October 2, 1928.

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HEROIC VIRTUE OF PIUS X

On September 3, His Eminence, the Cardinal Prefect of the Sacred Congregation of Rites, read in the presence of the Pope the decree proclaiming the practice of heroic virtue on the part of Pius X.

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CONFRATERNITY PROBLEMS IN BRAZIL

An archdiocesan synod held in Rio de Janeiro set June, 1950, as the time limit within which confraternities were expected to amend their by-laws to bring them into conformity with canon law by making the confraternities subject to the ecclesiastical authorities. Because of their disobedient failure to comply with this injunction, the boards of directors of two confraternities have been excommunicated by the Cardinal Archbishop.

SECULAR

SCHOOL COMMITTEE FOR DEFENSE EFFORT

Thirty leading educators have established a five-member steering committee to gear the schools of the nation to the defense effort but no direct representation has been accorded the three and a half million children attending parochial schools or their twelve thousand Catholic teachers. Representation has been accorded the following groups: the National Council of Chief State School Officers, the National Educational Association, the American Council on Education, the Vocational Educational Association, and the National Commission on Teacher Education.

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OUTLAWING GOD IN THE STATE

Dr. Luther A. Weigle, dean emeritus of the Yale Divinity School, speaking before a World Convention on Christian Education held in Toronto and attended by forty-five hundred delegates from sixty-two countries, censured the effort of secularists to expel God from education and to foist their atheism or their so-called non-theistic humanism on schools and colleges. Furthermore, he condemned their project to expel God from government in consequence of their extreme view of the meaning of the principle of the separation of Church and State according to which God should be confined to the Church and outlawed from the State. On the contrary, he insisted that the real meaning of the principle is that Church and State shall be mutually free and that neither shall undertake to control the other. Experience has demonstrated, he contended, that a high degree of religious freedom can be secured without the separation of Church and State, as in Great Britain, while the separation of Church and State does not of itself insure religious freedom, as he who runs may read in the reports coming out of Russia.

A similar contention was voiced at the forty-first triennial Convention of the Missouri Synod of the Lutheran Church held in Milwaukee when its Board of Parish Education declared that the separation of Church and State does not demand the exclusion of religion from the education of children or even from the State itself, maintaining that the State should cooperate with the Church wher-

ever the welfare of the nation demands it, a cooperation permitted by the distinction of the two realms. In accord with this averment, the Board recommended to the convention that steps be taken for the reversal of the McCollum decision. Reflecting the Board's condemnation of education without religion in the public schools, the synod urged that the released time religious instruction program should be encouraged wherever it is legally possible.

The view thus expressed regarding the meaning of the separation of Church and State found support also in the General Council Meeting of the Congregational Christian Churches held in Cleveland which insisted that the principle of the separation of Church and State does not mean that government must discourage religion or that the Church must be silent on political issues. As a corollary of this position, the Meeting urged the cooperation of Catholics and Protestants in opposition to secularism and totalitarianism, especially in relation to the released time program. At the same time, it expressed itself as opposed to any subsidy to parochial schools for the transportation of children attending those schools and, *a fortiori,* for the payment of the salaries of teachers employed in those schools, or for the meeting of current expenses or of capital outlay. On the other hand, this opposition was described as not extending to scholarship aid to individual students in higher education or to the rendering of certain health services to pupils in the elementary and secondary schools.

Protestant religious day schools, if the public schools cannot do what needs doing, were advocated by Dr. F. Ernest Johnson, professor at Teacher's College, Columbia University, in an address before the General Synod of the Evangelical and Reformed Church. This position accorded with the criticism he directed against the tendency to interpret the principle of the separation of Church and State as meaning the separation between the State and all religion. The Synod itself endorsed for all children without distinction welfare and health services, insisting that children attending the parochial schools do not surrender their rights to share in the services provided for the general welfare of youth. On the other hand, it expressed opposition to any effort on the part of Roman Catholic officials to secure public funds for the maintenance of a private school system.

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RELEASED TIME

The views expressed in the foregoing paragraphs support the released time programs of religious instruction or the alternative of Protestant religious day schools. The latter alternative was endorsed by the Baptist General Conference of America which, meeting in Worcester, Massachusetts, endorsed interdenominational Protestant elementary schools throughout the United States, offering as its reason the fact that Christianity cannot be taught in the public schools. A note of opposition to released time programs crept into the proceedings of the Universalist Convention which, meeting in Woonsocket, Rhode Island, expressed continued disapproval of such religious instruction and of the use of public school buildings for religious instruction of any kind. It is remarkable that a Universalist Convention should depart so egregiously from a fairly universal Protestant point of view.

In New York, Supreme Court Justice Anthony Di Giovanna has upheld the constitutionality of the released time program in that State and the State's Citizens' Committee of One Hundred for Children and Youth has tentatively approved the continuation of the program.

In Fairfax County, Virginia, the County School Board voted to permit the Fairfax Council of Churches to park a mobile class room on school property for classes in religion to be conducted outside school hours. The holding of such classes during school time in a trailer moved from school to school was not permitted by the Elkhart, Indiana, School Board.

On the other hand, the Board of Education of Springfield, Ohio, has reinstated religious instruction in the public school buildings there after it had been suspended for a period of two years. For admission to the instruction classes the pupils are required to present the written permission of a parent or guardian.

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RETIREMENT BENEFITS FOR BIBLE TEACHERS

The Attorney General of North Carolina has handed down a ruling in virtue of which teachers of Bible courses in public schools may be employed in such a way as to receive the benefit of retirement privileges under the State law.

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SABBATICAL LEAVE FOR RELIGIOUS RESEARCH

The Attorney General of Kentucky has issued a ruling under which school teachers cannot be given a leave of absence, such as is authorized by State law for educational or professional purposes, in order that they may devote themselves to research work in religious education under the direction of a church board. The reason advanced for this decision is the fact that religious teaching is not part of the common school curriculum.

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TRANSPORTATION

The ninetieth General Assembly of the Presbyterian Church in the United States (Southern) has expressed itself as opposed to the diversion of public funds to parochial schools. Opposition to the diversion of federal funds to pay for the transportation of children attending parochial schools was voiced for the fourth time by the American Federation of Teachers by a vote of 526-244. A similar attitude was displayed by the one hundred and nineteenth Indiana Conference of the Methodist Church which insisted that no federal aid be given to parochial schools, and the General Council Meeting of the Congregational Christian Churches.

The Texas State Board of Education has banned the allocation of funds to defray the expenses of transporting children to parochial schools. This decision is especially oppressive in southern Texas where two-thirds of the State's million and a half Catholics reside. As a penalty, funds will be withheld from school districts affording transportation other than that required to transport children and personnel to public schools.

In New York, the Acting State Education Commissioner ruled that District 5, North Hempstead, Long Island, must defray the cost of transporting local children to three parochial schools in neighboring communities which they are obliged to attend because of the high enrollment in parochial schools closer at hand.

The Attorney General of Massachusetts has handed down a ruling which denies a place on the November election ballot to an initiative petition seeking the repeal of the Sears-Rugg law. The reason for the decision is the fact that the constitution provides that no law relating to religion, religious practices, or religious institutions shall be subject to a referendum.

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OPPOSITION TO FEDERAL CHILD PROGRAM

The Religious Liberty Association, an adjunct of the Seventh Day Adventist Church, is fighting the expansion of the federal child program on the ground that it would use the facilities of voluntary agencies and that thus parochial schools would be admitted to share in the funds involved.

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TABLE FOR MEDICAL COLLEGE AID BILL

Under the influence of pressure coming from such agencies as the Protestants and Other Americans United for the Separation of Church and State and the Baptist Joint Conference Committee on Public Affairs, the House Committee on Interstate and Foreign Commerce has tabled a bill which would have aided Catholic medical colleges, as well as other colleges of the same character.

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HOSPITAL EXPANSION HAMPERED

Federal funds granted for any purpose, specifically for hospital expansion, were rejected by anticipatory refusal through the action of the one hundred and nineteenth Indiana Conference of the Methodist Church which extended its prohibitory effect to all the institutions of the church.

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VATICAN ENVOY

The same Conference of the Methodist Church to which reference has just been made also went on record as opposed to the sending of a representative of the United States to the Vatican, an action also taken by the General Synod of the Evangelical and Reformed Church and by the American members of the Executive Committee of the International Council of Christian Churches.

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DEFENDERS OF THE *NATION*

By a voice vote the American Federation of Teachers approved a resolution that the *Nation* be restored to the public school libraries of New York City.

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LUTHERAN PROHIBITION OF LODGES

A resolution of the Lutheran Church's Missouri Synod has reaffirmed its position of 1926 opposing lodges or societies of an un-Christian or an anti-Christian character. The leaders of the Synod held that lodge ritual frequently teaches an emasculated, watered-down religion. The resolution was adopted after a report was made by a Synod Commission appointed to study the matter of youth organizations sponsored by freemasonry. The report insisted that vigilance must be employed in warning all pastors against permitting the lodge evil to exist in their churches.

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METHODIST CONDEMNATION OF MERCY KILLING

The Newark Methodist Conference unanimously adopted a report condemning mercy killing.

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RESTRICTION ON AMOUNT OF TRUST

The Corporation Court at Lynchburg, Virginia, has ruled that $100,000 is the limit beyond which a church may not be permitted to accept a trust fund. Accordingly, it reduced to that amount a trust fund of $375,000.

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VANCOUVER SCHOOL TAX

The payment of a license fee of five dollars was refused by the authorities of the school of Our Lady of Perpetual Help, with the result that a fine of $2.50 was imposed by a municipal court. Appeal has been taken to the Supreme Court of British Columbia.

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SAN SALVADOR DISCRIMINATION AGAINST MINISTERS

The Constitutional Assembly sitting in San Salvador rejected a proposed constitutional amendment which would have removed a sixty-four year old clause in virtue of which ministers of any religious denomination are forbidden to vote, to belong to a political party, or to stand for election to any public office.

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RELIGIOUS INSTRUCTION IN CHILE

By a vote of 71-49, the House of Representatives of Chile has passed a bill which makes mandatory the giving of religious instruction in public schools and colleges. A similar bill was enacted by the Senate two years ago. An effort will be made to have the bill vetoed.

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RELIGIOUS SCHOOL EXTINCTION IN ENGLAND

In England one hundred and fifty-nine church-sponsored primary schools have been compelled to close their doors because of their inability to meet government regulations under the 1944 Education Act which requires denominations to pay fifty per cent of the cost of bringing schools up to the specified standards. One hundred and eighteen of the schools thus closed belonged to the Church of England. British Free Church leaders met with Catholics in June to draft a joint proposal for submission to the government with the purpose of relieving the pressure on many other schools.

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INDEPENDENT SCHOOLS IN NORTH IRELAND

The General Assembly of the Presbyterian Church of Ireland has voted to send a deputation to the Minister of Education to discuss the position of the voluntary grammar schools under the Education Act of 1947. This action is a corollary of the order requiring independent grammar schools to decide before June, 1950, whether to accept State control or to continue to operate independently. State-controlled schools are entitled to one hundred per cent of the costs needed to be defrayed in meeting items of building and maintenance, whereas only sixty-five per cent of this amount can be obtained by schools continuing independent operation. All Catholic schools in Ulster have already agreed to operate independently and several Church of England (Anglican) schools have taken the same course.

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AUSTRALIAN AID FOR CHURCH SCHOOLS

By a vote of 165-154, at its annual conference, the New South Wales branch of the Australian Labor Party endorsed State aid for denominational schools, the allotments to be granted on a per capita basis between government and non-government schools.

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BERMUDA BAN ON PAROCHIAL SCHOOLS

By a vote of 16-9, the House of Assembly of Bermuda rejected a petition for the opening of a parochial school and banned the opening of new denominational schools. The only Catholic school existing there is Mt. St. Agnes Academy, opened prior to the adoption of the School Act Amendment of 1926, which made the permission of the Bermuda Board of Education a requisite to the opening of any new private school.

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SCHOOL TAX IN THE PHILIPPINES

President Elpidio Quirino has denied the petition of the University of Santo Tomas for a suspension of the examination of the University's books by the Collector of Internal Revenue, pending the outcome of a suit which the University has filed with the Supreme Court of the Islands testing the validity of a law imposing income tax on educational institutions. Moreover, the Secretary of Finance has demanded the payment of $358,000 in back taxes for which the government refuses to await the outcome of the suit.

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AUSTRALIAN BLANSHARDISM

The High Court of Australia ordered stricken out as vexatious and an abuse of the process of the Court a petition challenging the right of a Catholic to be chosen as a member of the Australian Parliament on the ground that such an act was in contravention of Section 44 of the Australian Constitution which bars from that post any citizen or subject of a foreign power. The Court said that it could not be maintained that Catholics are subjects of a foreign power and that every person born in Australia, into whatever religion he may be born or whatever religion he may embrace, is, according to the law of Australia, a British subject. The Court noted that many thousands of Catholics had fought in the armed forces of Australia in recent wars. He said that the petitioner was trying to revive a view that was abandoned in England in 1829 when it was enacted that Catholics could be members of either House of Parliament.

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MISCEGENATION FINE IN SOUTH AFRICA

The Supreme Court of South Africa unanimously set aside the conviction of Father Thomas L. Gill, of Capetown, who had appealed a decision fining him for witnessing a marriage ceremony between a white man and a colored woman in violation of a Mixed Marriages Act forbidding the marriage of Europeans with non-Europeans.

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RELAXATION OF SWEDEN'S INTOLERANCE

Several measures have been endorsed in Sweden which would ameliorate in no small degree the conditions of Catholics in that country, lifting from them the oppressive and discriminatory legislation under which they have labored for three hundred years. Under the new measures, it would be possible to open Catholic schools operated by the Church under the supervision of State authorities and even to establish a limited number of religious houses for Catholic Swedes, to the exclusion of foreign members of the respective institutes; Catholic children in public schools would be exempted from attendance at Lutheran religious instruction but would be subject to examination by Protestant authorities on their knowledge of Catholic doctrine; Catholics would be eligible for public office except in the Ministries of Justice and Education; they would also be eligible for appointment to the teaching staffs of the universities, but not to the theological faculties. On the other hand, Catholics would still be obliged to notify the Protestant parsons of their forthcoming marriages.

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NON-CATHOLIC PLAN FOR JERUSALEM

Two hundred and eighty-five non-Catholic religious and lay leaders presented to President Truman a plan for a curatorship of Jerusalem that is very similar to that advanced by the authorities of the Israeli government themselves. Among the signers were G. Bromley Oxnam, Bartley C. Crum, and Freda Kirchwey, editor of the *Nation*. Under the plan thus presented the curatorship would be exercised over all the Holy Places and it would operate as a Commission of the United Nations composed of representatives of the Catholic, Protestant, Jewish, Moslem, and Greek Orthodox

interests. The scope of its activity would be the preservation and the restoration of the Holy Places and the facilitating of access to them. The dissident Armenian Patriarchate of Jerusalem pointed to the failure of the plan to give it representation and criticized it before the Trusteeship Council of the United Nations for that reason as well as for the further one that the plan would not be conducive to the preservation of the unity of the City.

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PROTESTANT PROSELYTISM IN ISRAELI

A scheduled Protestant broadcast which would have been delivered over Radio Israeli was canceled when the authorities suggested that a proposed sermon written in Hebrew be omitted. The broadcast was to have inaugurated a series of regular programs to be given by a group of Protestant organizations in Jerusalem. Jewish officials insisted that the broadcasting of the service in Hebrew imparted to it a proselytizing character.

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RELIGIOUS FREEDOM IN PAKISTAN

The Premier of Pakistan has guaranteed full rights of religious practice to Hindus, Christians, and members of other religions.

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EASTERN ZONE BISHOP AT FULDA

For the first time since the war, Most Rev. Peter Legge, of Bautzen, the only Ordinary in the Soviet Zone of Germany, has been able to attend a meeting of the German Hierarchy at Fulda. He reported on the loyalty of his flock to the faith.

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PARENTS' RIGHTS IN RHINE-WESTPHALIA

The Constitution of Rhine-Westphalia, adopted by a vote of 3,200,000 to 2,000,000, reserves to parents the right to choose the school which their children will attend and provides for religious instruction in the public schools. In the election, the communists polled five per cent as against fourteen per cent three years previously. The socialists made slight gains.

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PARENTS' RIGHTS IN BAVARIA

The Bavarian Diet adopted a school law making the denominational school the norm. An interdenominational school may be established where at least one per cent of the population belongs to the religious minority. Where interdenominational schools exist, parents may choose the school which they wish their children to attend. Where but one of the two types is represented in the community, parents may send their children to the school of their choice in a neighboring community.

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TREATY VIOLATION OF SOVIET SATELLITES

The International Court of Justice has ruled that the Soviet satellites, Bulgaria, Hungary, and Romania, have violated their peace treaties by boycotting commissions appointed for the arbitration of charges of the violation of human rights brought to the attention of the Court by the United States and other allied nations.

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IN LIEU OF THE STOCKHOLM APPEAL

Prominent clergymen have warned against the Stockholm Peace Appeal and have charted a program for the promotion of genuine peace of which the following four points are the constituent elements: 1) a renunciation of the use of war or threats of force as an instrument of national policy; 2) a loyal adherence to the solemn obligations of the Charter of the United Nations for the maintenance of international peace and security and the peaceful settlement of disputes; 3) a respect for and the observance of the human rights and the fundamental freedoms of all; and 4) the participation in positive programs of the United Nations for the common welfare and for the attainment of better standards of living.

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TERMITES IN POLAND

The authorities in Poland are conducting sight-seeing tours of Poland's large churches, but only on Sundays and feast days, during the Masses at which the people attempt to fulfill their obligation of hearing Mass. Other devices adopted to wean the people away

from this Sunday observance are the organizing of political and athletic events at the time when Mass is offered and the establishment of work brigades of students and officials who are employed in construction and repair work.

A new marriage law becomes effective in Poland on October 1. It asserts the State's right to intervene in any family situation which it deems contrary to the interests of the State, interests which it also makes the criterion determining whether or not a divorce shall be granted. In the case of divorce, the law provides that the State shall take control of the children. The law also demands that a civil service of marriage must precede the ecclesiastical ceremonies. It further enacts that a wife must contribute equal support to the family.

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ROMANIAN SPOLIATION

Through the Chief Inspector of the Romanian Ministry for Religious Affairs, the government has transferred all the property of the Latin Church to a small group of apostate priests known as the Latin-Rite Church of Transylvania, whose charter denies the jurisdictional authority of the Holy See.

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HUNGARIAN SURGERY

Not one parochial school remains in Hungary. The Protestant churches have been able to retain a few of their high schools through appeasement agreements accepted by the government. Moreover, a campaign has been directed against those attending the religious instruction given in the State schools, and this has caused a considerable decrease in attendance.

All university faculties of theology, Catholic and Protestant, must close under a governmental order demanding it.

The government has managed to obtain the signatures of three hundred priests to a document demanding Church-State accord, professing loyalty to the State, supporting the Stockholm Peace Appeal, and opposing the use of the atom bomb.

The Church-State agreement which the government is apparently so anxious to obtain on its own terms is regarded as seriously impeded by Bishop Josef Peteri, of Vacz, who is considered the

stumbling block in the path of ultimate success in this matter. Consequently he has been denounced as a fascist and been threatened with disciplinary action by Cabinet Ministers and by the press. A synthetic campaign has been organized against him in the factories.

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CZECHO-SLOVAK CONTROL OF THEOLOGY

Catholic and Protestant seminaries in Czecho-Slovakia have been abolished as independent institutions and have been replaced by State-controlled theological schools.

RELINQUISHMENT OF RIGHTS IN PALESTINE

It must be stressed . . . that the ancient right of protection by the Christian states, exercised in the Ottoman Empire and temporarily suspended under the mandate of 1922 [assigning Palestine to Great Britain as a Mandatory], was automatically revived on May 5, 1948, when this mandate ended. The Resolution of the General Assembly [of the United Nations] of November 29, 1947, indirectly confirmed this, since it invited the Powers concerned to renounce their privileges. . . .

A renunciation of these rights of protection by the Christian Powers, particularly by the Powers, Signatories to the Treaty of Berlin of 1878 [in which Turkey conceded to everyone within her territory freedom of religion and of religious organization, equal rights for traveling clergymen and pilgrims, and the right of diplomatic and consular protection regarding these persons and their establishments, especially at the Holy Places], would be equal to the abandonment of nearly the last remaining legal means of safeguarding the Sanctuaries of Christendom in an area which at present has not yet emerged from a state of war and which is filled with future dangerous tensions. At least the Catholics of those countries which enjoy such historic rights of protection should require their governments to maintain and to make the fullest possible use of their ancient rights, and should emphasize the fact that they consider a possible renunciation of the latter as allowable only for a time and under conditions in which reliable and unequivocal guarantees for the security of the Holy Places will be established.—In the third line from the end of this quotation, the word "allowable" is used as an accurate statement of the intention involved rather than the word "valid", as it stood in the original article on "The Internationalization of Jerusalem" (THE JURIST, X [1950], 386).

Book Reviews

DE CERTITUDINE MORALI QUAE IN JUDICIS ANIMO AD SENTENTIAE PRONUNTIATIONEM REQUIRITUR. Eduardus A. McCarthy, J.C.D. Pontificium Institutum Utriusque Juris, Romae, 1948. Pp. 119.

This is a doctoral dissertation of considerable importance in Canon Law.

The seriousness of the obligation of a judge to determine the certainty required before pronouncing sentence cannot be overestimated. The practical point involved is how to arrive at such certainty. To this point Dr. McCarthy addresses himself with clarity and abundant argument.

The dissertation opens with a fairly long historical treatise which considers the notion of judicial certainty in Roman and German Law. To this is added the development of this notion in the time of Gratian and the Decretals. Investigation of this type is necessary to understand properly the historical role of the judge.

The canonical commentary of the dissertation is a well-developed series of observations on part of the Allocution of Pope Pius XII to the Auditors and Officials of the Roman Rota, October 1, 1942. In his Allocution, the Pope mentioned the kind of certainty which is required and which is sufficient in a judge. The task of Dr. McCarthy was to indicate the means which can be employed to arrive at such certainty.

The indication of these means, or methods, is naturally preceded by a discussion of the differences between philosophical, theological and judicial certainty. There are considerable differences here and the author clearly states them. Once these differences are understood, the way is opened for a detailed account of the items to be weighed in arriving at judicial certainty. These are principally (1) the nature of the thing to be proved and its capability of proof, (2) the gravity of the matter, (3) the preeminence of the public good in all cases. These items are adequately considered.

The judge himself must finally make up his own mind. Hence he must consult his conscience in everything where the law itself

has not set down sufficiency of proof. An obligation of this kind is obviously serious. The author recognizes this and suggests ways in which an honest and fair sentence can be pronounced. These suggestions are useful contributions.

Some points in this dissertation are matters of opinion. Hence everything will not be admitted by all canonists. There is the matter, for instance, of how many incontrovertible presumptions exist in *The Code of Canon Law.* The author maintains there is but one: others claim at least two. On one point, according to the reviewer, the author is in error. In canon 20 the doctrine of canonists does not interpret former legislation but instead offers a norm to be followed when no specific law is to be found (p. 109, ft. 89).

The bibliography is sufficient but there is no index. It should be said again that this dissertation is an important work. It should be studied by judges and by all students of law.

L'ÉGLISE CATHOLIQUE ET L'ORGANISATION DE LA SOCIÉTÉ INTERNATIONALE CONTEMPORAINE. Richard Arés, S.J. Studia Collegii Maximi Immaculatae Conceptionis, Montreal, Canada, 1949. Pp. 269.

This book makes a diligent study of the Church in relation to the community of nations. It is, of course, unnecessary to insist that such study must be made by jurists and diplomats if any real success can come from the undeniably difficult efforts of those who seek peace. A reading of the book under review will give an excellent foundation for discussion in this matter.

The author has organized his matter well. The three separate divisions consider first the fact that the Church has some relation with the community of nations, secondly the principles which underlie the relation between the Church and the international temporal order and, thirdly the constructive propositions of the Church.

The first part of this book is chronological. It considers the Church and the attempts at organization of the community of nations before the conferences at Dumbarton Oaks. These conferences are then considered. This first part closes with a discussion on the activities of the United Nations from 1945 to 1949.

Consideration of the principles upon which the international temporal order must rest and their relation to the Church is the subject

of the second part of this work. Most of this consideration is already well known and needs no comment here. But it is a pleasure to see these principles set down again for consideration.

In the third part of his work, the author expounds a well worthwhile program which is derived from the teaching of the Church. The author emphasizes the various fundamental tenets upon which society, international as well as national, must rest. These are the basic dignity of man, and the existence of God and natural law. The spirit of commonalty and solidarity, of justice and equity, of sincerity and loyalty, of benevolence and charity, are all clearly expounded and properly placed in the affairs of the community of nations.

The matter of this third part of the book is ably supported by abundant annotation from theoretical volumes and practical articles and addresses. Analyses of jurists are cited as well as statements and allocutions of Popes.

The bibliography must receive special words of praise. The list of authors is satisfactory but the selection of sources from 1939 to 1948 is particularly commendable. Here one can find important Papal statements and documents and apposite pastoral letters of the American, British and French hierarchy.

SISTEMAS DE DOTACIÓN DE LA IGLESIA CATÓLICA. Par Laureano Perez Mier. Consejo Superior de Investigaciones Cientificas, Instituto "San Raimundo de Penafort". Salamanca, 1949. Pp. xxxi-301.

The general law of the Church regarding the support of the Church and its ministers leaves the details to be determined by councils and synods. It is this determination which the author of this book surveys with considerable success.

The plan of this book is excellent. After a comparatively short introduction in which the basic systems of church support are stated and explained, the author devotes a chapter each to several nations and groups of nations. In every chapter, the general condition of the Church is examined. This is done in the light of constitutional civil law or the law of the Concordat. Representative legislation of councils and synods is presented to indicate how church support is obtained. This legislation is interesting as it shows the attitudes

of legislators toward such devices as pew-rent, tithes, subsidies, etc.

Of more than ordinary interest, is the chapter devoted to church support in the United States. In this chapter is a discussion on the various civil titles by which property is held. No real argument is developed to sustain one title rather than another, but the author, of course, sympathetically urges the recommendation of the Sacred Congregation of the Council regarding Parish Corporations.

Presentation of the particular law of the United States is an arrangement of apposite texts from our councils and synods. Conciliar law is taken from the latest Council of Portland in Oregon. Synodal law is taken from the latest synods of Harrisburg and Toledo. The author chose the latter synods as representative of synods in the United States.

The utility of this book is unquestionable. It is one of the best studies in particular law. It is not meant to be a dissertation on the comparative merits of such legislation but rather a study of comparisons. Few errors other than typographical ones are found. Some geographical misplacements exist but they are readily excusable.

The bibliography is detailed and divided properly into sources and reference works. Some criticism, however, may be made since articles and books are considered as one. The index is entirely satisfactory. An English translation of this work would be welcome.

HISTOIRE DES CONCILES. Tome XI, Conciles des Orientaux Catholiques par Charles de Clercq. Premiere Partie de 1575 a 1849. Paris, Libraire Letouzey et Ané, 1949. Pp. xii-492.

The years of reform following the Council of Trent can be traced well enough in the gradual acceptance of the Council's decrees in the West. In the East, however, more difficulty is experienced in discovering its discipline since the various Oriental Churches were comparatively independent. The same yardstick of reform is not always available here.

The tome under review greatly aids in attaining a clear-cut idea of the operations of the Oriental Churches from 1575 to 1849. Both provincial councils and diocesan synods are included. Roumanian, Armenian and Ruthenian bodies are examined. The order of treatment is chronological rather than topical. Sufficient detail of the

various councils and synods are offered. Whenever questions of reunion arise, these are pointed out with clarity. Whatever opposition was on hand is indicated together with the efforts of civil rulers to enforce, encourage or challenge reunion.

Of special interest is the complete text of the decrees of the Armenian synod of Lwow in 1689. This document furnishes an excellent study of the differences between the discipline of the East and the West. Also of considerable interest is the synthesis of the different conciliar and synodal legislation of the Oriental Churches. For a summary of such legislation, this chapter should be read first.

The bibliography is divided into works of Canon Law, the Christian Orient and History.

LA MATERIA E LA FORMA DEL BATTESIMO NELLA CHIESA DI S. AMBROGIO. Sac. Dott. Benedetto Marchetta. Pontificia Università Gregoriana, Roma, 1945. Pp. xiii-190.

As every one knows, patristic Theology has become a well-developed field. Books like the one under brief review will add impetus to this study.

The purpose of this book is to discover in the sacramental Theology of Saint Ambrose the matter and form of the Sacrament of Baptism. To arrive at his conclusions, the author has carefully read, studied and digested the works of Saint Ambrose. Indeed he has given evidence that he is thoroughly familiar with even the minor works of the saint.

The first conclusion of the author is that the interrogative form of Baptism was favored by Saint Ambrose. This form has largely disappeared in the various rites but was in use in other places besides Milan. Dogmatically, according to the author, the form is admissible.

The second conclusion of the author is that Saint Ambrose placed entirely too much emphasis on the consecration of the water for valid Baptism. It is clearly pointed out in this book that the distinction between valid and licit matter, and between ordinary and extraordinary administration were unknown to Saint Ambrose. Consequently he insisted on consecrated water for valid Baptism.

Various editions of the works of Saint Ambrose are indicated by

the author as sources for his own work. The author's bibliography is detailed. The index is satisfactory.

This work is a definite contribution to patristic Theology.

MIDNIGHT CALCULATOR by Rev. James O. Patterson and Rev. George E. O'Donnell. P.O. Box 9607, Philadelphia 31, Pa. Pp. 84. Price $2.00.

It is always useful to have at hand a book like the one under brief review. There are many occasions within the different zones of time when one would wish to see which midnight he might select.

The introductory pages of this book are clear and concise. With considerable and commendable skill the authors have avoided much which would merely confuse rather than clarify the points at issue.

The best advantage of this book is the detailed listing of thousands of cities and towns not usually found in other books. The local mean time (midnight) is given after each name. With the use of another detailed chart, the reader can easily find the true time. Daylight saving time, if desired, is easily added.

The authors should be congratulated on a work which must have taken some years to compile.

IL MESSAGGIO CRISTIANO NELL' ORA PRESENTE. P. Emidio Da Ascoli, O.F.M.Cap. Rovigo, Instituto Padano di Arti Graphiche, 1950. Pp. 622. Prezzo L. 1000.

This book is a series of conferences which can be read with profit. Several of these conferences should be indicated as containing matter in reference to rights and obligations.

The author stresses the inherent dignity of the human person and carefully delineates the rights which must support this dignity. The whole question of liberty is nicely investigated. The limits of liberty are rigorously disclosed. Responsibility, obligation and duty are emphasized as correlatives to rights. These items are both personal and social. Much credit is due to the author for insisting upon the relation between rights and obligations. It is easy to be extreme here but the author had preserved an admirable balance.

The table of contents serves as an index.

EDWARD ROELKER

THE CATHOLIC UNIVERSITY OF AMERICA

Chronicle

GENERAL

At a meeting of the International Commission of Catholic Publishers and the International Federation of Catholic Journalists, a permanent secretariat of the International Catholic Press Union was set up in Geneva to assure Catholic representation at the United Nations, Lake Success, and at the United Nations Educational, Scientific, and Cultural Organization, Paris. The secretariat will be located temporarily at Geneva, the headquarters of the International Catholic Organizations.

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Most Rev. Karl J. Alter, D.D., Archbishop of Cincinnati, observed the fortieth anniversary of his ordination.

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Most Rev. James J. Sweeney, D.D., Bishop of Honolulu, observed the silver jubilee of his ordination.

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On September 3, His Eminence, Samuel Cardinal Stritch, Archbishop of Chicago, preached at the Pontifical Mass celebrated by Most Rev. Jose Garibi Rivera, Archbishop of Guadalajara, marking the centenary of the establishment of the Archdiocese of Santa Fe.

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Most Rev. John G. Murray, D.D., Archbishop of St. Paul, observed the centenary of the establishment, July 19, 1850, of the Archdiocese of St. Paul.

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The observance of the centenary of the establishment of the Diocese of Kansas City was combined with the ceremonies honoring the Feast of Corpus Christi.

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September 1-5, the International Convention of Catholic Artists assembled in Rome.

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September 4-8, the International Missionary Congress was held in Rome. The Pontifical Association of the Holy Childhood participated in its deliberations.

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September 5-7, the third International Congress of the Missionary Union of the Clergy was held in Rome. It was addressed by Most Rev. Thomas J. O'Donnell, D.D., Auxiliary Bishop of New York, who also represented the United States at a meeting of the National Directors of the Pontifical Mission Aid Societies held in Rome September 3, 4.

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September 5-9, the International Congress of Nurses and Catholic Medical Assistants was held in Rome.

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September 7-11, the International Congress on the History of Scholastic Philosophy was held in Rome.

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September 7-13, the Catholic International Union of Social Service held its silver jubilee conference in Rome.

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September 8-12, the International Congress of Marian Congregations was held in Rome.

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September 11-17, the third International Thomist Congress was held in Rome.

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September 13-16, the International Institute of Catholic Charities was held in Rome.

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Delegates from twenty countries represented their constituents at a meeting of the Society of St. Vincent de Paul in Paris.

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August 15-17, the sixty-eighth annual meeting of the Supreme Council of the Knights of Columbus assembled in New York City. The opening Pontifical Mass was celebrated by Most Rev. Joseph F. Flannelly, D.D., Auxiliary of New York. His Eminence, Francis Cardinal Spellman, presided at the Mass. The sermon was preached by Most Rev. James E. Kearney, D.D., Bishop of Rochester.

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July 10-14, the twenty-third biennial convention of the Catholic Daughters of America was held in Asheville, North Carolina.

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The ninety-fifth annual convention of the Catholic Central Verein of America was held in Quincy, Illinois.

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August 11-13, the seventy-eighth annual convention of the Catholic Total Abstinence Union was held in New York.

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September 19-22, the fourteenth annual meeting of the Confraternity of Christian Doctrine was held in Cleveland.

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August 22-24, the Catholic Biblical Association of America met at Kenrick Seminary, Webster Groves, Missouri.

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August 24-27, the fourteenth national convention of the Catholic Students' Mission Crusade met at the University of Notre Dame.

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August 16-18, delegates from two thousand educational institutions attended the annual Franciscan Educational Conference at Cardinal Stritch College, Milwaukee.

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August 19, the twenty-first International Pax Romana Congress opened at Amsterdam.

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The third International Congress on Hospital Administration was held in Rio de Janeiro under the sponsorship of the Pan-American Sanitary Bureau.

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August 21-24, the 1950 Liturgical Week was held at Conception Abbey, Conception, Missouri.

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The State Board of Regents has authorized the amendment of the Charter to give St. Bonaventure's College the status of a university.

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August 2, His Eminence, Luigi Cardinal Lavitrano died. He was Prefect of the Sacred Congregation of Religious.

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Most Rev. Joseph E. Ritter, D.D., Archbishop of St. Louis, celebrated the Pontifical Mass of Requiem in the Cathedral of St. Louis, St. Louis, for the funeral of the late Most Rev. Leo J. Steck, D.D., Auxiliary of Salt Lake, who died June 19. The sermon was preached by Most Rev. Duane G. Hunt, D.D., Bishop of Salt Lake.

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On June 28, Most Rev. Leo Binz, D.D., Coadjutor of Dubuque, celebrated the Pontifical Mass of Requiem in St. Stanislaus' Church, Winona, for the funeral of Most Rev. Francis M. Kelly, D.D., former Bishop of Winona, who died June 24. The sermon was preached by Most Rev. Peter W. Bartholome, D.D., Coadjutor of St. Cloud.

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DIGNITIES

The personal title of Archbishop has been conferred on the Most Rev. Gerald P. O'Hara, D.D., Bishop of Savannah-Atlanta, formerly Regent of the Papal Nunciature in Romania.

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On September 26, Most Rev. Karl J. Alter, D.D., formerly Bishop of Toledo, was installed as Archbishop of Cincinnati.

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On October 17, Most Rev. George J. Rehring, D.D., will be installed in the Cathedral of Our Lady, Queen of the Most Holy Rosary, Toledo.

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On September 12, Most Rev. Francis P. Leipzig, D.D., Bishop of Baker City, was consecrated in the Cathedral of the Immaculate Conception, Portland, Oregon, by Most Rev. Edward D. Howard, D.D., Archbishop of Portland. The co-consecrators were Most Rev. Edwin V. O'Hara, D.D., Bishop of Kansas City, and Most Rev. Edward J. Kelly, D.D., Bishop of Boise. The sermon was preached by Most Rev. Duane G. Hunt, D.D., Bishop of Salt Lake.

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On September 21, Most Rev. Patrick J. McCormick, D.D., Titular Bishop of Atenia and Auxiliary of Washington, was consecrated in the Shrine of the Immaculate Conception, Washington, D. C., by the Most Reverend Apostolic Delegate. Co-consecrators were Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington, and Most Rev. Henry J. O'Brien, D.D., Bishop of Hartford. The sermon was preached by Most Rev. Matthew F. Brady, D.D., Bishop of Manchester.

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On September 14, the Most Rev. Thomas F. Markham, D.D., Titular Bishop of Acalisso and Auxiliary of Boston, and Most Rev. Eric F. MacKenzie, D.D., Titular Bishop of Alba and also Auxiliary of Boston, were consecrated in the Cathedral of the Holy Cross, Boston, by Most Rev. Richard J. Cushing, D.D., Archbishop of Boston. The co-consecrators were Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington, and Most Rev. Thomas K. Gorman, D.D., Bishop of Reno. The sermon was preached by the consecrating Archbishop.

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On September 19, Most Rev. Leo A. Pursley, D.D., Titular Bishop of Hadrianopolis in Pisidia and Auxiliary of Fort Wayne, was consecrated by the Most Reverend Apostolic Delegate in the Cathedral at Fort Wayne. The co-consecrators were: Most Rev. John F. Noll, D.D., Bishop of Fort Wayne, and Most Rev. Joseph H. Marling, C.PP.S., D.D., Auxiliary of Kansas City. The sermon was preached by Most Rev. John F. O'Hara, C.S.C., D.D., Bishop of Buffalo.

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On September 21, Most Rev. Merlin J. Guilfoyle, D.D., was consecrated Titular Bishop of Bulle and Auxiliary of San Francisco by Most Rev. John J. Mitty, D.D., Archbishop of San Francisco. The co-consecrators were Most Rev. James J. Sweeney, D.D., Bishop of Honolulu, and Most Rev. Hugh A. Donohoe, D.D., Auxiliary of San Francisco. The sermon was preached by Most Rev. Apollinaris Baumgartner, O.F.M.Cap., D.D., Vicar Apostolic of Guam.

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Most Rev. Robert E. Lucey, D.D., Archbishop of San Antonio, has been named by President Truman to a five-man commission to study migratory

labor, especially that of Mexicans, and the illegal entry of the latter into the United States.

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Very Rev. Christopher J. O'Toole, C.S.C., has been elected Superior General of the Congregation of the Holy Cross.

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Rt. Rev. Mark Braun, O.S.B., D.D., of St. Gregory's Abbey, Shawnee, Oklahoma, has been elected Abbot President of the American Cassinese Congregation for a second six year term.

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Very Rev. A. William Crandell, S.J., has been named a Provincial of the Society of Jesus.

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Very Rev. Joseph A. Dougherty, O.S.A., has been named Provincial of the Augustinian Fathers of the Eastern Province of St. Thomas.

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Very Rev. Theodore J. Mehling, C.S.C., has been named Provincial of the Indiana Province of the Congregation of the Holy Cross.

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Very Rev. Jerome Jacobs, S.D.S., has been re-elected head of the American Province of the Society of the Divine Saviour.

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Rt. Rev. Damian Jentges, O.S.B., D.D., has been elected Abbot-Coadjutor of the Mt. Angel Abbey, Mt. Angel, Oregon.

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Rt. Rev. John M. McCarthy, of Los Angeles, has been named a Protonotary Apostolic.

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The following have been named Domestic Prelates: Rt. Rev. Msgrs. Charles A. Donahue, William E. Drapeau, James F. Fitzsimons, Irving L. Gifford, Robert H. Lord, Michael F. Madden, Denis F. Murphy, and Cornelius T. Sherlok, of the Archdiocese of Boston; Stephen J. Mauer, William H. Russell, Henry Scharaphoff, Bernard H. Skahill, Nicholas A. Steffen, and Luke B. Striegel, of the Archdiocese of Dubuque; Raymond B. Bernau, Romeo Blanchette, Matthias J. Butala, Gregory M. Cloos, Peter B. Default, Edwin V. Hoover, Eugene J. Lake, Edward P. McDonough, William J. Plunkett, and Edmund A. Sweeney, of the Diocese of Joliet; and John A. Cotter, and James R. McClure, of the Diocese of Ogdensburg.

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The following have been named Papal Chamberlains: Very Rev. Msgrs. Michael A. Buckley, John M. Fleming, Vincent W. Jeffers, Joseph C. Krug, Gustav J. Schultheiss, and Charles M. Walsh, of the Archdiocese of New York; and Joseph A. Wagner, of the Diocese of Joliet.

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The following have been named Knights Commander of the Order of St. Gregory the Great: Major General Thomas F. Hickey, Chief of Staff of the United States Forces in Austria, and John Henry Kultgen, of Waco, Texas.

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The following have been named Knights of St. Gregory: Severiano F. Naranjo, of the Archdiocese of Santa Fe; Raphael Hume, of the Diocese of Hartford; and Norman L. Boudreaux, Adolph D. Dolson, Martin E. Walter, and John R. Young, of the Diocese of Galveston.

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Dr. Melvin Thill, of the Diocese of Galveston, has been named a Papal Chamberlain.

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The Papal Medal, *Pro Ecclesia et Pontifice,* has been conferred on Mrs. Mary C. Carroll and Mrs. Mary K. Gubbels, of the Diocese of Galveston.

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The Papal Medal, *Benemerenti,* has been conferred on Maurice Lavanoux, Secretary of the Liturgical Arts Society.

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Federal Judge John F. X. McGohey, received an honorary degree at the one hundred and fifth commencement held at Fordham University.

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Louis St. Laurent, Prime Minister of Canada, received an honorary degree at the commencement held at St. Louis University on June 10.

ENCYCLICAL ON THE TEACHING OFFICE

On August 12 our Holy Father issued an Encyclical Letter, *Humani generis,* laying down anew the fundamental principles governing the teaching office of the Church and its duty to protect divine revelation against all inroads from falsehood and error. In it he warned teachers against the allurements of new philosophies, against an unwarranted zeal for the reconciliation of novel theories with the teaching of the Church, against evolution as the explanation of the origin of all things, against existentialism which ignores essences, and against historicism which rests its values on human events rather than on the foundations of truth and absolute law. The letter insisted that the content of encyclical letters demands assent because the latter speak with the ordinary teaching authority of the Pope; moreover, what is generally propounded in encyclical letters belongs to the body of Catholic doctrine. It deplored the fact that scholastic philosophy is scorned in some quarters in which it should be revered for its harmony with divine revelation and its effectiveness in promoting sound progress in learning.

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